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THE UNITED STATES AND THE INTERNATIONAL LABOR ORGANIZATION

HEARING

BEFORE THE

COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

EXAMINATION OF THE RELATIONSHIP BETWEEN THE UNITED STATES AND THE INTERNATIONAL LABOR ORGANIZATION

SEPTEMBER 11, 1985

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THE UNITED STATES AND THE INTERNATIONAL LABOR ORGANIZATION

WEDNESDAY, SEPTEMBER 11, 1985

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 10:01 a.m., in room SD-430, Dirksen Senate Office Building, Senator Orrin G. Hatch (chairman) presiding.

Present: Senators Hatch, Grassley, Simon, Metzenbaum, Dodd, and Pell.

OPENING STATEMENT OF SENATOR HATCH

The CHAIRMAN. Mr. Secretary, I am delighted to welcome you to our committee this morning. It is a very important hearing.

The committee is convening today's hearing to examine current U.S. relations with the International Labor Organization.

The two main questions posed are: First, what is the feasibility of U.S. ratification of ILO labor conventions without creating a detrimental effect on U.S. labor law? Second, is there any linkage between the U.S. ratification history, having ratified only 7 out of approximately 160 conventions, and our country's influence within the ILO?

The International Labor Organization is one of the first agencies to be created within the U.N. system, having been organized in 1919 in conjunction with the League of Nations. Its mission is as ambitious as it is humanitarian—to improve the working and living conditions of workers throughout the world. The ILO is uniquely structured to accomplish this objective.

Unlike any other U.N. agency, the ILO operates on the principle of tripartism: Employer and worker representatives, chosen by their respective constituencies, participate on an equal footing with Government representatives in all decisionmaking matters before the ILO. Together, these three representative groups from each member nation work to develop international labor standards.

During its 66-year history, the ILO has formulated approximately 160 conventions, convering all aspects of employee relationships and a number of specific occupations.

The work of the ILO does not cease with the promulgation of a convention. It has continuing responsibilities in supervising the application of its standards in the member countries which ratify the conventions. Here, too, the ILO is unique. Compliance with ratified conventions is promoted and achieved through the continuing oversight and dialog between member nations and the ILO's technical experts and its tripartite committees. At bottom, it is the moral suasion which comes with public scrutiny and comment in an international forum which prompts a ratifying member country to bring its labor laws and practices into greater conformity with ILO standards.

The United States, having refused to join the League of Nations in 1919, did not become a member of the ILO until 1934. Since then, our country has ratified only seven conventions, all but one of which involved maritime employment. This is one of the lowest ratification rates. Ironically, the U.S. labor-management jurisprudence is one of the most progressive and enlighted in the world today.

Still, it has become a point of contention whether the U.S. track record in the ILO can and should be improved upon, if not for domestic reasons, then surely for enhancing the U.S. stature and influence within the ILO and throughout the world.

Our country has not always enjoyed smooth sailing in the ILO. Indeed, the ILO by the mid-1970's had charted a course which our Government believed was so inimical to the central mission of the agency that we withdrew in protest in 1977.

The development of labor standards was subordinatd to radical politics, violations of due process, and a selective concern for human rights. The United States only rejoined in 1980 as the ILO began to regain its bearings. In light of this recent history, it is most important that the United States find ways to enhance its constructive influence in the ILO and to promote its critical mandate to improve world labor standards.

To assist the committee in evaluating the U.S. relations with the ILO and the impact of its posture on ratification, we are honored to have some very distinguished public officials with us today.

We are pleased to welcome you, Secretary Shultz, the Secretary of State of this country; later, the Secretary of Labor, William Brock, will testify; Mr. Lane Kirkland, the president of the AFL-CIO, who will be accompanied by Irving Brown, the director of its international affairs department and Mr. Edward J. Hickey, of the law firm of Mulholland & Hickey; Ambassador Abraham Katz, President of the U.S. Council for International Business, who of course will be accompanied by Mr. Cory Highland of the U.S. Council, and Mr. Edward Potter, of the law firm of McGuiness & Williams.

We are delighted to have this distinguished panel of witnesses here today.

Before we begin, let me ask Senator Grassley if he has an opening statement.

Senator **Grassley**. I do not have an oral statement, but I do have a written statement that I would like to place in the record, Mr. Chairman.

The **Chairman**. Without objection, we will place that in the record. Thank you.

[The prepared statement of Senator Grassley follows:]

PREPARED STATEMENT OF SENATOR GRASSLEY

Senator **Grassley**. Mr. Chairman, first let me say that I am glad you have decided to hold this hearing on the important subject of U.S. relations with the Internationsal Labor Organization. As I understand it, the purpose of today's hearing is to examine the arguments for and against U.S. ratification of ILO conventions on international labor standards.

Of the more than 160 conventions adopted by the ILO, the U.S. Senate has ratified only 7. There are those who contend that it is deplorable that the United States has seen fit to ratify so few of these conventions, some of which were drafted, in part, by U.S. representatives to the ILO. They argue that our record of nonratification places us in a bad light at the ILO and reduces our effectiveness in that body. They contend that if the United States would improve its record of ratification, its effectiveness at the ILO would be improved.

If it is in the best interests of the United States to belong to the ILO and to be concerned about what transpires there, members of this committee need to consider those arguments carefully.

On the other hand, Mr. Chairman, the decision to ratify conventions adopted by the ILO should not be taken lightly. According to the ILO constitution, when a convention is ratified by a member state that state is obligated to make the convention a part of appropriate national law. Those who oppose the ratification of ILO conventions argue that ratification could have potentially harmful effects on domestic business procedures and labor law.

Mr. Chairman, as I have noted, the ILO has adopted more than 160 ILO conventions. I expect that it will continue to increase that number in future years. Although each of those conventions is capable of standing or falling on its own merit, I think there are also some broad issues that members of the Senate need to consider as they weigh the question of whether or not to ratify conventions adopted by the ILO. I trust that this hearig will prove useful to the members of this committee and, hopefully, to all Members of the Senate in their deliberations.

The **Chairman**. We will also put into the record at this point a statement by Senator Thurmond.

[The prepared statement of Senator Thurmond follows:]

STATEMENT BY SENATOR STROM THURMOND (R-SC) BEFORE THE COMMITTEE ON LABOR AND HUMAN RESOURCES REFERENCE THE INTERNATIONAL LABOR ORGANIZATION, WEDNESDAY SEPTEMBER 11, 1985, SD-430, 9:30 AM.

MR. CHAIRMAN:

It is a pleasure to be here today. I, too, would like to extend a warm welcome to Secretary Shultz, Secretary Brock, Ambassador Katz, Mr. Kirkland and all the other distinguished witnesses who will testify today.

The International Labor Organization (ILO) was established in 1919. Its purposes are to improve the level of working conditions internationally, to generate employment, and to promote human rights.

The ILO strayed from these expressed goals, and the United States correctly severed its ties with the ILO in 1977. Because progress was made by the ILO in key areas, including limiting the debate of issues not relevant to the goals of the Organization and complying with their own due process guidelines, the United States rejoined the ILO in 1980.

In preparing for this hearing, I was pleased to read reports which indicated that progress has continued in terms of increased United States influence in the ILO. However, I agree with the view that it is not in the National interest to ratify ILO conventions which contain legal requirements different from our current law. To do so would have a negative impact on current United States labor law, as well as the legislative functions of Congress and the State governments.

Ratification of an ILO convention creates an affirmative duty to conform domestic law to the terms of the convention.

Many of the proposed conventions would usurp the jurisdiction of Congress to establish a National labor policy, and the jurisdiction of the individual States to regulate labor matters traditionally within their authority.

Mr. Chairman, I appreciate you scheduling this hearing, and hope that many of the complex issues which arise as a result of our participation in the ILO can be addressed today.

Although I cannot remain for the full hearing, I look forward to reviewing the testimony which will be presented.

The CHAIRMAN. We will begin with the very distinguished Secretary of State, Secretary Shultz. And again, welcome to the committee. You have been in this room many times, as Secretary of Labor and otherwise, and we are honored to have you here today.

STATEMENT OF HON. GEORGE P. SHULTZ, SECRETARY, U.S. DEPARTMENT OF STATE, WASHINGTON, DC

Secretary SHULTZ. Thank you, Mr. Chairman.

I appreciate this opportunity to appear before the Senate Labor and Human Resources Committee. As you noted, I have appeared here many times. In fact, I believe it was in this room that I stood for confirmation to the first Cabinet post that I held as Secretary of Labor, and I remember that occasion very distinctly.

But, it has been many years since I have had occasion to appear here, so it is a welcome opportunity to come this morning to discuss the U.S. role in the ILO and some concrete steps we can take to strengthen our participation.

Mr. Chairman, I know you have felt for some time now that these hearings would be useful, and I should say at the outset that I regret it was impossible for me to attend earlier.

As I understand it, and as your statement bore out, the committee is interested in two issues: The feasibility of U.S. ratification of certain ILO conventions, without there being a detrimental effect on U.S. labor law, and whether there is any linkage between the U.S. ratification of conventions and our influence in the Organization.

The Labor Department is the agency most qualified to address the first question. I will be glad to give my views on the linkage question.

I would first like to state briefly how we assess developments in the ILO over the 5 years since the United States rejoined the Organization in 1980.

Members will recall that the U.S. withdrew from the ILO in 1977 because we believed fundamental ILO principles were being undermined to a point that was inconsistent with our continued participation. The ILO, in our opinion, had allowed itself to be subverted from its admirable, original goals.

We believed that the principle of tripartitism, that is, the right of employer and worker groups to participate autonomously in the Organization and on national delegations, was being eroded.

We also believed that the Organization was exercising a double standard in citing countries found to be in violation of ratified conventions. Up to the time of our withdrawal, the ILO Conference on only one occasion had censured a communist country for violating one of the critical ILO human rights conventions dealing with freedom of association, forced labor or discrimination. However, the Conference regularly criticized others, particularly Latin American countries.

Third, we were dissatisfied with the Organization's growing disregard of its own principles of due process; its disregard of the ILO's longstanding procedures for impartially investigating complaints against members alleged to have violated their obligations under conventions. This was particularly true in the case of Israel.

Finally, we believed that too many members were using the ILO simply as a political forum to pursue issues irrelevant to the ILO's mission and that properly belonged in the Security Council or the U.N. General Assembly. These political activities were disrupting ILO proceedings and detracting from legitimate technical work.

The United States returned to the Organization in 1980 because we believed there had been substantial improvement in these areas during our absence. We rejoined because the ILO showed greater determination to adhere to its original principles. We have seen continued improvements in the ILO over the past 5 years and are encouraged by them.

I might say this little experience with a unit in the U.N. system is instructive, and I think we have to, throughout the U.N. system, be prepared to say what we believe and stand for it. If a given organization gets way off the rails, we should be prepared to withdraw, with the understanding that if things improve and come around to the original purposes, then we can consider reentry. And, as you know, we have done that on another occasion.

In 1980, the Conference censured Czechoslovakia for discriminating against workers on the basis of their political beliefs and, over Soviet objections, strengthened mechanisms for supervising the implementation of conventions.

In 1981, the Soviet Union was cited for failure to bring its law and practce into conformity with the ILO's convention on freedom of association, and in December of that year, with the suppression of the trade union Solidarity, the ILO began what was to become a long and entirely proper effort to ameliorate the tragic conditions in Poland.

In 1982, the ILO Conference did not act on a politically motivated anti-Israeli resolution. However, its prestigious Committee on the Application of Conventions and Recommendations censured the Polish Government, as had the governing body's Committee on Freedom of Association, in a series of overwhelming votes in the spring and fall.

In 1983, the Organization turned a deaf ear to Soviet calls to reform and democratize—in reality, to politicize and thus to weaken—ILO supervisory machinery, that is, the procedures by which the Organization supervises the implementation of conventions. It established a Commission of Inquiry on Poland, and by secret votes, adopted a well-balanced human rights report that, over strenuous Soviet opposition, included criticism of Czechoslovakia.

This encouraging trend continued in 1984. The Conference decisively rejected a concerted Soviet effort to undermine the supervisory machinery. The Committee of Inquiry on Poland turned in a strong report justifiably critical of the Polish Government, and the report was approved by the governing body over strong Soviet resistance.

The Conference adopted another balanced human rights report, and it affirmed Israel's right to participate in ILO regional activities.

Finally, in 1985, the Organization once more rejected Soviet so-called reforms. It turned back a Nicaraguan effort to manipulate the Non-Aligned Group and to politicize the annual conference through the introduction of a resolution against the United States trade embargo.

We could not have achieved these improvements without the close cooperation of U.S. employers and workers. Tripartitism constitutes the very essence of the ILO which sets it apart from all other organs of the U.N. system. It is the unique feature of tripartitism, together with the ILO's mission of promoting workers' human rights and working standards around the world, which underlies the basic interest of the United States in the ILO. As we look at the full panoply of international organizations in the U.N. system, we now find the ILO in the forefront of those advancing U.S. political interests because of these special features—and it is these special features of the ILO that we are committed to preserving.

This list of truly positive developments since our return to the ILO, however, has been accompanied by setbacks, and there are areas where we believe further improvement is necessary. Several come readily to mind.

Despite Director General Blanchard's laudable efforts in recent years to hold down costs, we have not been able to support the ILO's proposed budget two of the three times it has come up for a vote since 1980. Although this year we were able to join a consensus on the budget, intensified efforts will be required in the future to identify savings and to reprogram resources from lower to higher priority activities.

Second, we believe the Organization has not completely rid itself of an unfortunate double standard with regard to labor rights violations in the Soviet bloc. We still see it hesitant and reluctant to squarely address those human rights issues. Unfortunately, last June's conference provided an example of this practice when it abruptly decided to forego a discussion of freedom of association in the Soviet Union.

Finally, despite some recent successes, too many members want to introduce extraneous political issues into the ILO's debate. Others persist in misusing the speaker's platform at annual conferences for attacks on the United States and other member states on matters unrelated to the concerns of the ILO. Nevertheless, on balance, the record over the past few years has been positive.

With this as background, I would like to address the question, Is there any linkage between U.S. influence in the ILO and our own record of ratification of ILO conventions—one of your questions, Mr. Chairman. I believe there is such a linkage.

It is my view that the primary factor that led the ILO to turn around was that other members took seriously our withdrawal from the Organization in 1977. They understood the implications of our withdrawal. We clearly demonstrated our determination not to participate until there were clear signs that the Organization was prepared to resume its proper function. The ILO took those steps and we returned, determined to use our influence to help the ILO continue to improve.

But our leverage is somewhat hampered by the fact that the Unites States has not improved its own record of ratification of ILO conventions over the past 30 years. Thus far, this has not proven to be a crucial impediment to achieving our goals in the ILO in any concretely verifiable way, but we believe it has taken a subtle toll. It has provided our adversaries with readymade propaganda ammunition. It fosters attitudes on the part of third countries to equate U.S. actions and policies with those of our adversaries and ultimately is used to excuse decisions in the Committee on the Application of Conventions and recommendations to go easy on the Soviets in individual cases under review. It is my judgment that an improved ratification record would have served U.S. foreign policy interests better. More importantly, I believe a better record can help us in the future.

Let me give some cases that point out the need for a stronger U.S. presence in the ILO.

The recent increasing effectiveness of the ILO in monitoring Soviet and Eastern European behavior placed the Soviets on the defense. In response, the Soviets and their allies have launched a major continuing campaign to subvert the ILO's human rights supervisory machinery and its unique tripartite system. If they do not get their way, they are threatening to reduce their budget contributions, pull out, or cause other problems. In response to these threats, we are already seeing some signs of backsliding in ILO subordinate bodies.

Thwarting the Soviet counterattack will be a major United States goal in the ILO for the foreseeable future. Our traditional approach that ratification of ILO conventions is simply out of the question for us makes it harder for us to exert influence.

We are open to the frequent charge—and it comes not just from our adversaries—that our defense of the ILO machinery is hypocritical because we ratify no conventions and are therefore not subject to the machinery's operations to the same extent as others. It is also charged that because the United States does not ratify conventions, we have no moral standing when urging the Organization to take up the alleged transgressions of others. As a practical matter, because we have not ratified most ILO conventions, we are disbarred by the ILO constitution from bringing complaints against those who violate their obligations.

In response to these charges, we say that U.S. law and practice are in substantial compliance with ILO conventions. It is more important, we say, for the aims of ILO conventions to be embodied in national legislation than merely ratified and never implemented, as is the case in too many countries with superficially good ratification records.

We also note that the U.S. Constitution, Bill of Rights, and civil rights statutes ensure freedom of association, freedom from forced labor, and equality of opportunity and treatment. These arguments are important, but they do not defuse the charges against us brought about by our refusal to consider ratification of all but a few ILO conventions, practically all maritime matters, as you noted.

However, this approach conflicts with the obligations we assumed when we joined the ILO. The ILO's purpose is to raise labor standards around the globe through the process of adoption and ratification of conventions. Every member state has a moral obligation to make a good faith effort to determine whether it can ratify conventions. But our behavior sends a message that ILO procedures do not apply to us. The message we send is—do as we say, not as we do.

There is also inconsistency between our failure to consider ratification of ILO conventions and the growing tendency in the Congress to refer to internationally recognized worker rights standards regarding freedom of association and forced labor in U.S. trade and aid legislation. These standards are compatible with the ILO conventions.

Our allies in the ILO who have stood squarely with us in turning back the Soviet offensive against the supervisory machinery have warned us that the Soviets intend increasingly to exploit our nonratification record as they continue to press their assault. Our allies see the U.S. nonratification record as a chink in our collective armor.

Now we need to give this issue its proper measure of importance. I am not saying that a reversal of U.S. ratification policy would provide a magic cure-all for the residue of defects we find in the ILO, but it would repair a significant weak spot in our defenses.

Mr. Chairman, we feel we should correct our approach by reopening the ledger on possible ratification, making a good-faith effort to review more systematically and vigorously those conventions which we can ratify without contravening U.S. labor laws. We should be more flexible and consider individual conventions on their own merits, rather than to continue to make a priori judgments that only maritime conventions are suitable for the United States to ratify.

This is not to say that after 30 years of inactivity on the conventions we can suddenly rush into the ratification process without due deliberation and careful consideration. There are serious impediments to the ratification of conventions by the United States, and they will not go away simply by wishing them away. There are mechanisms in the Government designed to assess conventions in terms of their impact on current U.S. domestic law. I applaud the decision of Secretary Brock to schedule a meeting of the President's Committee on the ILO at an early opportunity and his intention to continue the important work of the Tripartite Advisory Panel on International Labor Standards.

These procedures should be followed to explore whether there are ways we can ratify conventions without compromising Federal and State labor laws.

I also firmly believe that in order to move effectively ahead in this process it is absolutely essential to have the consensus of the U.S. worker and employer representatives. I hope that business and labor leaders can explore ways together of providing us with their wisdom and helping us to get this process underway.

Mr. Chairman, the ILO's central mission is to improve people's lives through the development of effective international labor standards. We support this mission and participate actively in almost all aspects of the ILO's work. We have not, however, made ratification of conventions as high a priority as we perhaps might have, given our leadership responsibilities in the Organization. I would like to see us improve our record in this regard. It would be in the foreign policy interest of the United States to do so.

Thank you, Mr. Chairman.

The **Chairman**. Thank you, Mr. Secretary.

I think it is rather unusual to have two distinguished Cabinet Secretaries participate in a Labor Committee hearing, so we are grateful to have you here. And yet, the responsibility for developing and implementing U.S. policy in the ILO has been a shared one, between the State Department and the Labor Department, as you know.

I am wondering if, for the record, you could briefly outline to the committee what the respective responsibilities are with regard to the ILO, with regard to the State Department and the Labor Department?

Secretary **Shultz**. Well, of course, the Labor Department's responsibility stemming from its concern with the labor situation in the United States and its mandate to look after that activity is to give leadership in our representation in the ILO. It works with the labor and the employer organizations. And we support that, as we do the efforts of all departments of our Government as they work in international organizations It is up to the State Department to coordinate that activity and to weigh in, from the standpoint of our overall foreign policy objectives. So you might say the Department of Labor has the special responsibility to look at the labor aspects of this, and we try to give a coordinating hand in terms of foreign policy and in terms of the relationship of what happens in the ILO to what happens in other U.N. organizations.

The **Chairman**. It seems to me that we could capsulize your observations regarding the conflict of forces in the ILO as follows: The ILO's own constitution is predicated on the democratic and pluralistic principles of free enterprise. The Communist members, led by the Soviet bloc, have over the years engaged in a concerted effort to undermine the structure and the free enterprise objectives of the ILO. The United States has continually fought to preserve these particular principles of the ILO, and looking on, there have been almost 100 nations which have joined the ILO in the last 35 years, many of which are developing countries who could align themselves with either the West or the Soviet bloc, and in some ways, some of them are undecided.

Now, your point is that the United States could more easily win the hearts and minds of these emerging nations and convince them of the viability of industrial democracy in free enterprise were the United States to embrace the work product of the ILO, in particular, a number of these conventions.

Would that be a fair comment?

Secretary **Shultz**. That is a fair comment. Of course, we have to look at each one carefully, as I said, and evaluate it in terms of our own constitutional and statutory base and the implications of our Federal-State system.

But I think the point I was trying to make is we should not just automatically rule out ratification. We should take each convention and look at it on its merits and ask ourselves is this a suitable thing for the United States to associate itself with. And if it is, we should be willing to ratify it.

The **Chairman**. That is right. We have the added problem that if we ratify a convention, that would be akin to ratification of a treaty, and the constitution provides that the treaty would be the supreme law of the land. And a lot of people are concerned that that might supersede present existing labor laws, which have been delicately drawn and have a delicate balance and which, although both sides can point to difficulties with them from time to time, still have worked rather well in our country.

That is really one of the problems with the ratification process which we have been exploring over the last 3 or 4 years as we have worked with all parties in this matter.

Now, in your testimony, you allude to the recent concerted effort by the Soviets to undermine the ILO machinery. In this regard, I understand that the Communist-bloc countries earlier this year, for instance, submitted an extensive list of complaints to the Director General of the ILO regarding the ILO's practices and procedures.

Now, you suggest that this action, together with the threat at the Plenary Conference to withhold dues payments in the future, has resulted in some signs of, to use your words, some signs of "backsliding in the ILO subordinate bodies."

Could you list some of the things in particular that have happened as a result of this effort by the Soviets?

Secretary **Shultz**. Well, as far as particulars, I would rather consider that carefully and give you a statement for the record. But I think you can see how readily this fact can be used in terms of how the supervisory machinery works. As we try to make it work, the fact that we do not, in a sense, take part in it because of our lack of ratification puts us in a disadvantageous position.

The **Chairman**. Well, aside from the positive influence—we will, of course, put your additional comments in the record as you submit them to the committee. We would appreciate that, because I think it would be good to make that record, at this particular point.

[Information subsequently supplied for the record follows:]

In the 1985 Conference Committee on the Application of Conventions and Recommendations [CACR], the Worker Vice-Chairman instigated a Committee decision to defer substantive discussion of violations of Convention 87 (Freedom of Association) by the Soviet Union to "another occasion," in effect postponing discussion of serious and longstanding problems until 1987. Though cast primarily as a practical solution necessitated by the Committee's severe time constraints, we believe this decision represented the desire of some influential members of the Committee to appease the Soviets.

The CHAIRMAN. Aside from the positive influence which may flow from any ratification by the United States, what more immediate steps is the United States taking to counter the Soviet assault upon the ILO?

Secretary SHULTZ. Well, I think the principal thing to do is what we have been doing—that is, to stick with the tripartite form of organization, to organize ourselves effectively for the ongoing activities, to insist on U.S. representation in the Organization itself, which is not anywhere near high enough, and, when we go to the annual meetings of the governing body, to go there well-organized, with a strong point of view, and to work as a delegation, and I believe that has been happening quite effectively. It is that kind of thing that gives you the results that you need. And of course, in any body of that kind, it is not only what the United States does, but what others do, so we have to maintain our contacts with our friends and allies and develop a coherent picture that way. I think that is the sort of thing that lends effectiveness.

The CHAIRMAN. Although we in the United States from a world opinion standpoint have very liberal labor laws and freedoms in this country, as you pointed out, we have not ratified a large number of these conventions; we have only ratified 7 out of the 160-plus conventions of the ILO. But the Soviet Union has ratified a great number of those. And I undestand that the U.S.S.R. in the mid-1950's did ratify the Freedom of Association Conventions, Nos. 87 and 98 and, as you pointed out, it can fall back on this when it criticizes the United States for not having ratified these two conventions

Do you know if the U.S.S.R. has ratified any significant conventions in the past number of recent years?

Secretary SHULTZ. Well, I will have to give you an answer for the record on that, Mr. Chairman.

[Information subsequently supplied follows:]

The USSR has ratified three ILO conventions since 1975. They are: No. 138 (Minimum Age), No. 142 (Human Resources Development) and No. 149 (Nursing Personnel). The USSR has ratified a total of 43 conventions since becoming a member.

The CHAIRMAN. I think it is probably fair to say that the Soviet Union's compliance with the Freedom of Association Conventions has left a great deal to be desired.

Secretary SHULTZ. That is really the point; it is what do you actually do. And of course, that is why, despite the fact that we have not ratified conventions, we have been able to be as effective as we are, namely because conditions in the American workplace are superb compared with almost any place else that you want to look. The people are treated decently; they are relatively well-paid, and so on. They have freedom of association and can form unions, and so forth.

So it is that obvious fact that is our biggest argument and would continue to be our biggest argument. Nevertheless, the convention ratification point does give a definite chink in our armor, so to speak, and in our arguments, and we should be willing to look at it carefully.

The CHAIRMAN. I come back to these Third World countries. To some extent, at least, don't they tend to discount some of the assertions of the Soviets because they do not live up to these conventions, even though we are somewhat inhibited because we live up to them, even though we have not ratified them?

Secretary SHULTZ. Exactly.

The CHAIRMAN. OK. Now, Secretary Brock, who will be following you today, plans to reactivate the President's Committee on the ILO and the Tripartite Advisory Panel. And, as I understand it, you fully support that idea.

Secretary SHULTZ. Yes; I do.

The CHAIRMAN. I think it is a good idea because we need to resolve these problems some way or another, and I am hopeful that this hearing will help spur us on toward that end.

Having gone over the ILO a number of times and worked with our business, labor, and Government tripartite officials, they really feel like their hands are tied in many respects, as far as really carrying the fight of the United States forward.

Furthermore, although the ILO does not get a great deal of publicity within the confines of the United States, it really gets a lot of publicity all over the rest of the world, and especially in the Third World nations. That needs to be pointed out, and we are somewhat inhibited because of our inability to fully participate, because we have not ratified these conventions.

Now, I also understand that one of the first items on the agenda for the Tripartite Advisory Panel might be Convention No. 144 on tripartite consultation as opposed to the fundamental human rights conventions—those would be Nos. 87, 98, 29, and 105.

Now, do you think it is a good strategy to begin with a more modest convention such as No. 144 in this particular case?

Secretary SHULTZ. Yes; I do.

The CHAIRMAN. Do you think if we begin by taking what may be considered small steps in ratifying less problemmatic conventions, the U.S. influence in the ILO will be enhanced in any degree?

Secretary SHULTZ. I think it will be. And of course, what this signifies is that we are willing to look at conventions outside the maritime field on their merits.

The CHAIRMAN. That is great. In your testimony on page 10, you allude to the inconsistency between the U.S. failure to ratify conventions on the one hand, and on the other hand, Congress' recent actions with respect to workers' rights standards in U.S. trade legislation.

Now, could you tell the committee more specifically what legislation that is?

Secretary SHULTZ. Again, Mr. Chairman, I would like to give you a full rundown. I do not have chapter and verse in my head here.

The CHAIRMAN. OK.

[Information subsequently supplied for the record follows:]

U.S. trade legislation containing workers' rights provisions includes the Trade and Tariff Act of 1984.

For purposes of the bill, the Congress defined internationally recognized worker rights to include:

(a) the right of association;

(b) the right to organize and bargain collectively;

(c) a prohibition on the use of any form of forced or compulsory labor;

(d) a minimum age for the employment of children; and

(e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

Although ILO conventions exist on several of these categories, Congress did not specify that ILO conventions or ILO criteria form the basis for GSP decisions.

The Caribbean Basin Economic Recovery Act of 1983 also contains workers rights provisions.

The CHAIRMAN. Do you know whether any foreign country seeking favored status has objected to the act's criteria—that would be the Trade and Tariff Act of 1984—on the grounds that the U.S. own laws do not reflect a sufficient commitment to workers' rights?

Secretary SHULTZ. If they do, they are misplaced, because I think that from the standpoint of our domestic legislation and, as you pointed out more importantly, the actual conditions of the American workplace make any such allegation totally inappropriate.

The CHAIRMAN. One of the concerns that has been privately voiced by employers is that if we ratify Convention No. 144 on tripartite consultation, that the floodgates will be open toward ratification of other, more problem-causing conventions.

Do you believe that there is any real merit in this particular fear?

Secretary SHULTZ. Well, of course, as I said a minute ago, ratifying such a convention has implications in and of itself, but it has the broader meaning that we have decided to look at these conventions on their merits, and not simply rule out ratification automatically, more or less, for anything outside the maritime field. That is a genuine issue, and people are divided on it. And basically, I have taken your request for my testimony to be a request for an opinion on that, and my answer has been, looking at it from the standpoint of our foreign policy objectives and our effectiveness for work within the ILO organization, that we ought to be willing to look at these conventions on their merits. And of course, that does not mean we just ratify them all; it means that we look at them, and we have to be careful about our Constitution and our statutes and our Federal-State system, and so on; but nevertheless, look at them on their merits under those circumstances.

The CHAIRMAN. Well, I personally am very grateful that you have taken time from what I know is an extremely harassing and busy schedule to come in and lend your voice to some of the problems that really do exist over there, because I find that the ILO is an extremely important organization, and that the United States is severely hampered because we have not ratified some of the conventions. And yet, there are good arguments aginst ratification as a result of the potential disruption of domestic labor laws.

What I would like you to consider doing, you and your staff, Mr. Secretary, is to give some consideration as to how we might be able to ratify these various conventions without the disruption of domestic labor law, because this issue does involve the question of treaty ratification under the Constitution, and "last in time" being the binding law of the land and the supreme law of the land. Many people are concerned on both labor side and management side that if we ratified the conventions, some of them are drafted rather broadly, where our labor laws are drafted rather specifically, and if the broad language of the conventions becomes law, or the supreme law of the land, then that broad language may supersede our more specific labor law, domestic labor law, and in the process, cause the complete disruption of labor-management relations in the country.

Secretary SHULTZ. Yes; I think those are legitimate points, and they have to be judged. And here, I think the Department of Labor would be the lead department to make a judgment about that issue.

The CHAIRMAN. I think that may be so, but I think we do need the best foreign policy international law minds working on this that we can have, too. So I think it really is going to take a joint effort of both the Department of State and the Department of Labor to come up with a way of resolving it.

Secretary SHULTZ. I can assure you that we are prepared to partcipate in this effort.

The CHAIRMAN. Well, thank you. And I also take your suggestion really seriously, that in order to accomplish a ratification of the various conventions that would give us a lot more say in the ILO, and have our influence felt even more, and give us a better chance of working with these Third World countries, as well as other countries, that literally, it is going to take a real effort and a real consensus on the part of both management and labor, or business and workers, in this country, so that we can resolve these problems. But there has to be a way around it, because I know that we in this country have liberal, broad labor laws; we live up to those conventions, although we have not ratified them. The Russians have ratified many of them, and they do not live up to them. But because they have ratified them, they have advantages at this very prestigious and important International Labor Organization that we do not have, nor will we have until we, in a forthright way, ratify those very same conventions. So it is a very important issue. It is an important issue to me as chairman of this committee. I believe Senator Kennedy as ranking minority member feels deeply about this—as I think should all members of our country, Democrats and Republicans, because it is a bipartisan issue, and there ought to be a way to solve this. But I do not think we can do it without the best legal minds in both the Department of State and the Department of Labor, working with labor and management to resolve these problems.

I want to thank you for your willingness to participate with us and see what we can do to resolve this.

We will turn to Senator Grassley at this point.

Senator GRASSLEY. Thank you, Mr. Chairman, and Secretary Shultz.

Mr. Secretary, I think I determined from your testimony that we ought to be looking at some of these conventions, we ought to be moving toward ratifying some of them, but with no implication that we should ratify all 160, or even look at all 160.

Is that a fair assessment?

Secretary SHULTZ. Yes, sir.

Senator GRASSLEY. Then, along that line, could you point out to the committee which if any of the unratified conventions you consider most important for the U.S. Senate to ratify, not only on their merits, but also from the standpoint that it might give us an open door to more influence within the Organization?

Secretary **Shultz**. I think the chairman gave a little list a few moments ago, of the numbers involved, and I would think that is a good place to start, and it seems to me we should walk before we run. We should work at this carefully. But the list that the chairman gave is a good list.

Senator **Grassley**. OK. From that standpoint, then, the list that the chairman gave, from the standpoint of your speaking for the administration, comprises the most important conventions the Senate should be working on?

Secretary **Shultz**. I think those represent a place to start, and we have to first get over the hurdle, so to speak. Are we going to be willing to look at these conventions on their merits, or automatically rule them all out of consideration? That is the first step to take. I think we should take that step.

Now, having said that, then you take any particular one and look at it, and you have to judge it. That is what the committee that Secretary Brock is going to convene presumably will do, and we will work with the Department of Labor on that. And, while we have some opinions, I am not here to try to prejudge what our opinion should be on any particular convention.

Senator **Grassley**. So from that standpoint, other than following the lead of the chairman, the administration is looking more at the procedure by which we proceed down this road as opposed to saying, well, it is very important that we look at these dozen or two dozen first. The administration is not putting itself in that posture yet?

Secretary **Shultz**. I think there is a view, all right, of what the conventions are that we ought to look at first, and the chairman has, I think, identified those.

Senator **Grassley**. OK.

Secretary **Shultz**. So now, we have to ask ourselves the question, do we want to do that? I think the answer is yes. Others may have different views. But at any rate, that is where we are. And if we move, then we will look at these individual ones, and if the administration wants to proceed with any, they will come before the committee for your judgment.

Senator **Grassley**. OK. So your position is more procedural than one of substance, at this point. Then, let me ask yet this. Are there any of the 150 that you would feel that the United States absolutely should not ratify?

Secretary **Shultz**. Well, probably. But, I am not ready to go through the list here. I have not studied it carefully in quite some time. I used to know something about it, but I cannot say that I have been right up close to it lately.

The **Chairman**. It is pretty complex, it really is.

Senator **Grassley**. I am not necessarily disputing your contention that we might have more influence if we would consider a process of ratification, but considering your point of view, I would like to have you look at it from the standpoint of other countries. In those cases where ratifying states have not lived up to their commitments under the ILO conventions, how has this affected their participation or influence in the ILO?

Secretary **Shultz**. Well, it puts them in this supervisory machinery, and one of the issues here is what is going to happen to that machinery, as we seek to compare what people say they will do and what, by virtue of work in the ILO, presumably, they say they will do, and what they actually do. So that is what that machinery is designed to accomplish.

And as I pointed out in my testimony, there has been a notable change in the ILO's performance from our standpoint, since we have rejoined it, and we want to keep it that way. And the Soviet Union does not like it that way, and they are trying to change the supervisory machinery. So in a sense, that is where the pick-and-shovel work is, and we want to be part of that pick-and-shovel work.

Senator GRASSLEY. Yes; I can appreciate that. But now you are suggesting that the United States could improve its influence if it were to ratify some of these conventions. So my question is, can you point out some countries who have not lived up to their commitments, and whether or not this has reduced or been a negative to their influence within the ILO?

Secretary SHULTZ. I think the nonperformance, so to speak, and the recognition of that fact, does reduce a country's influence, and should. That should be the criterion. And that is why, when the Soviet Union ratifies conventions and does not live up to them, and we do not ratify them, but do live up to them, that our influence is nevertheless greater. But in terms of our leverage, if we are able to identify conventions that we feel we can properly ratify, given our system of government and laws, I think it will strengthen us even more.

But people see through this business of ratifying things and not living up to them, but we just want to keep pushing on that.

Senator GRASSLEY. In regard to the worldwide track record of adoption of these conventions, are there any conventions that have been adopted by all of the states that belong to the ILO?

Secretary SHULTZ. I am not sure about that. I hesitate to answer specific questions of fact when I am not as well-informed as I should be.

Senator GRASSLEY. Could you submit that in writing?

Secretary SHULTZ. Yes, sir.

Senator GRASSLEY. In conjunction with that, do you know of any conventions that have been adopted by all of the countries except the United States?

Secretary SHULTZ. Well, again, you are asking me question of fact that I should be informed about, but I am sorry, I just am not.

[Information subsequently supplied for the record follows:]

Of the total 161 ILO conventions, not one has been adopted by all of the members. As of June 1, 1985, Convention No. 29, (Forced Labor) with 128, had the highest number of ratifications. There are no cases where the U.S. stands alone in not having ratified. Indeed, there is a number of cases where as few as ten or less states have ratified conventions.

Senator GRASSLEY. OK. Thank you, Secretary Schultz.

The CHAIRMAN. Thank you, Senator.

Senator Simon.

Senator SIMON. Thank you, Mr. Chairman, and Mr. Secretary. It is great to have a witness with Illinois roots here.

I really just have two questions, and you may have touched on both, and I apologize for not being here earlier.

One of the concerns that some people have is that the conventions, particularly the one on the right of public employees to strike, would supersede State and Federal statutes. Do you have any comment on that charge that people make?

Secretary SHULTZ. I think that is the kind of question that has to be looked at closely when we take up any particular convention. And I would not presume to have a judgment at this point, but it is a legitimate question, I think.

Our focus here, or my focus, and I have felt, my role here, was to address the question: Should we be willing to look at conventions on their merits and consider them for ratification if we do not have a problem with respect to our peculiarities and our own system of government and laws. And I think myself that the answer to that is yes, we should be willing to look at them on their merits. Having said that, that is not prejudging the merits of any particular issue that may come along and the right to strike by public employees and that range of issues is a very sensitive one in this country, and we have to look carefully at it.

Senator SIMON. The next question—and you may wish to respond to this in writing, also—my understanding is that South Africa is a member of the ILO, and I am just wondering if you have any observations about their complying with the conventions of the ILO.

Secretary SHULTZ. Well, there are aspects of nondiscrimination, freedom of association, things of that kind, that are clearly a problem. With respect to South Africa, I have a Q&A here: Under the threat of actions tantamount to expulsion, South Africa withdrew from the ILO in 1964. So, it is not a member. On the other hand, if it were a member, some of these matters that are taken as standard fare would cause them great discomfort.

Senator SIMON. I thank you, Mr. Secretary, and thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Simon.

Mr. Secretary, I know you are very, very busy, and we are 5 minutes over what we said we would keep you. So we appreciate your coming. We admire what you are trying to do, and we appreciate the influence that you have added to this testimony today.

Secretary SHULTZ. Thank you.

The CHAIRMAN. Thank you so much.

We are very happy to have the Secretary of Labor with us today. We appreciate the efforts you have put forth, Mr. Secretary, to prepare your testimony. We consider this a very, very important set of problems, and we hope we can resolve them, and we look forward to hearing from you and what your particular feelings are in this area.

So, we will turn the time over to you.

STATEMENT OF HON. WILLIAM E. BROCK, SECRETARY, U.S. DEPARTMENT OF LABOR, WASHINGTON, DC, ACCOMPANIED BY ROBERT SEARBY, DEPUTY UNDER SECRETARY AND U.S. GOVERNMENT REPRESENTATIVE TO THE INTERNATIONAL LABOR ORGANIZATION

Secretary BROCK. Thank you, Mr. Chairman.

I first want to thank you for the invitation to appear today. I welcome the hearings and the opportunity they provide to review and assess our participation in the International Labor Organization and to explore new ideas for improving that participation.

I am accompanied by Deputy Under Secretary Robert Searby, who probably can answer the questions better than I can; he has been with it for quite a while.

The CHAIRMAN. Well, we welcome you as well, Mr. Searby.

Secretary BROCK. Let me begin by pointing out that I serve as Chairman of the President's Committee on the ILO with overall responsibility for coordinating U.S. Government policy in that organization.

I think no other organization really is quite like this one, for nowhere else do nongovernment delegates, workers and employers play such a vital and often decisive role.

Tripartism is the very heart and soul of the ILO. I saw that in my meetings and conversations in June with other delegates in Geneva, with the ILO Director General Francis Blanchard and members of his staff, and as I participated in the conference plenary debate on the changing nature of labor-management relations in today's world. This is an organization which has come a long way from where it stood just a decade ago when the United States filed its letter of intent to withdraw.

I do not think, however, that I need to spend much time today reviewing the past history of problems for U.S. participation—erosion of tripartism, selective concern for human righs, disregard for due process, and the politicization of the ILO. Suffice it to say that they were serious enough to fully justify, in my view, our withdrawal from the Organization.

There is also no doubt in my mind that there has been progress in the ILO since then—fragile progress, perhaps, but sufficient to cause the Soviets considerable anguish.

I must add here that we have in the ILO a Director General and staff who are committed to the fundamental principles of democracy and tripartism—something we do not always find in United Nations organizations.

The substance of what I would really like to address today is captured best in the title of the report prepared by the GAO for this committee and issued in May 1984. That report is entitled: "Sustaining Improved U.S. Participation in the International Labor Organization Requires New Approaches."

The GAO report notes that "the responsible agencies have improved the management of U.S. participation since rejoining the ILO in 1980. Overall objectives have been established and a system of regular consultations instituted among the tripartite representatives."

I am proud of the role which we in the Department have played in this effort. Our withdrawal in 1977 provided great leverage for promoting reform in the ILO. But it has taken more than that to maintain a positive momentum. It has taken creative and consistent approaches to dealing not just with the political issues, but with the technical, financial, and coordination issues as well.

For example, the President's Committee on the ILO agreed as early as 1980 that it was important to play an active role in shaping the ILO's technical work—in short, to make its programs more efficient and better-attuned to the needs of its members. But it is one thing to make that decision, and another to carry it out.

The implementation of our decisions has been our real strength. As the GAO report correctly points out, the Labor Department, in cooperation with State, Commerce, and OMB, took the initiative to launch an unprecedented review of the ILO's program and budget. This was not a one-shot effort. We have sustained it now over a number of years, with positive results.

This year, for the first time in more than a decade, the United States was able to support the ILO's budget proposals.

Coordination with friends and allies was another area we all agreed required more attention. I think we have made major progress in revitalizing the Industrial Market Economy Countries Group, particularly the IMEC Working Party on Standards.

Tripartite coordination here at home has been another area to which we have given considerable attention. I will not pretend that there have not been problems. But the mechanism of the President's committee has continued to work—if not at one level, then at another; if not formally, then it has worked informally. The point is, we have continued to consult and coordinate.

The history of our participation in the ILO is one of remarkable cohesion and unanimity on the fundamental issues. The progress we have seen in the ILO has come about, I believe, in large part because we have, on a tripartite basis and over many years, forged a clear and consistent set of policies which the U.S. Government, the AFL-CIO, and American employers have pursued in cooperative fashion.

We work best when we work together through consensus.

That same principle applies to another important aspect of our ILO participation—ratification of labor standards conventions. On this very important question, two things seem essential: First, we must be very clear on the legal implications of ratification; second, we must move together through consensus, now as in the past.

International labor standards play a crucial role in the work of the ILO. Perhaps no other ILO standards case has been more controversial and dramatic than that dealing with the Polish Government's suppression of the Solidarity labor movement. Several U.N. agencies considered the issue; only the ILO pursued it with consistency.

Challenging Communist violations of ILO standards is an effective way of achieving our goals in the Organization. Another goal is to assist ILO efforts in improving standards in cooperative developing countries, thus encouraging the growth of free economic and social institutions. But some people have said that the credibility of these efforts is damaged by our poor ratification record.

In discussing this issue, let me begin by distinguishing between the ratification of standards and the implication of them, a distinction recognized by the ILO.

The ILO develops two types of international labor standards—conventions and recommendations. Recommendations cannot be ratified, yet they constitute an important part of the ILO's international labor code. Similarly, the ILO constitution specifically allows federal states, such as the United States, in effect to treat as recommendations those conventions which do not pertain exclusively to federal issues.

Most importantly, the ILO's supervisory machinery is geared to ascertaining whether the objectives of international standards, both ratified and unratified, are reflected in the actual law and practice of each member state—in short, whether they are being implemented. Each year, the U.S. Government submits reports through this machinery on one or more unratified conventions, explaining our law and our practice.

And even if a country does not ratify many conventions, it is still responsible as an ILO member for complying with the basic principles of the labor rights conventions, Nos. 87 and 98. It is also subject to complaints against it on violations of these conventions. The complaints are processed through a special governing body Committee on Freedom of Association. The United States currently has a number of such complaints pending.

On the issue of the U.S. record on ratification, we have always maintained that the low number of U.S. ratifications is attributable mainly to our federal system of government. Most conventions would require legislative action by the constituent states as well as, or instead of, by the Federal Goverment, and the United States cannot assume a treaty obligation under a convention which might fall wholly or in part within state jurisdiction.

In 1980, the President's Committee on the ILO established a subgroup to study the legal implications of specific ILO conventions. The Tripartite Advisory Panel on International Labor Standards is composed of legal experts from the Departments of Labor, State, and Commerce, from the AFL-CIO, and the U.S. Council of International Business, and from other U.S. agencies depending upon the particular convention under discussion.

In February 1983, after 2 years of intermittent review and deliberation, TAPILS unanimously determined that there were no objections of a legal nature to ratification of two ILO conventions: Convention No. 244, concerning tripartite consultation, which obligates the ratifying state to ensure effective consultation between representatives of government, employers and workers, at least once a year, on a variety of ILO activities, and convention No. 147, concerning minimum standards on merchant ships.

The committee forwarded its determination to the President's Committee on the ILO, which must decide whether to recommend to the President that he submit these ILO conventions to the Senate for advice and consent.

I have begun the process of scheduling a meeting of the President's committee for this autumn. I expect that an executive branch letter on convention 147 will be ready for final approval at that meeting. I also look forward to the committee reaching a consensus on how we should proceed with respect to convention 144.

As for other ILO conventions, and particularly the important human rights standards, it is my intent to actively promote research and dialog on the prospects for U.S. ratification. However, I feel strongly that this process must continue to involve the objective examination by legal experts of the implications of individual, specific ILO conventions to be done through the TAPILS mechanism.

Finding answers to the important questions surrounding U.S. ratification requires care and tripartite good will. With the continued cooperation of these organizations represented here today, I am hopeful that this process can lead to mutual understanding.

What can we say of the future? Again, turning to the GAO report, I agree we must search for new approaches to sustain our improved participation in the ILO.

As one example, the United States has recently offered to the ILO a $100,000 grant for a project on labor-management cooperation in training and retraining programs. The project will demonstrate to the ILO, I hope, that it can draw upon the vast resources of its private sector members to help carry out its technical programs.

The Department is also completing a 1-year study of new directions in international labor standards which we hope will be useful in helping to shape ILO standards activities for the next decade.

As I indicated earlier, I have taken steps to schedule a meeting of the President's Committee on the ILO. I believe that body can be more effectively used at all levels to coordinate U.S. policy, share information, and to review and evaluate ILO programs.

The Congress also has an important role to play. I am aware, Mr. Chairman, of the role you have played, particularly during the 1983 conference, when we succeeded in stopping an anti-Israel resolution. I would like to explore the possibility for more regular exchanges of ideas and information between the President's committee and the two Houses of Congress.

Mr. Chairman, let me say again how much I appreciate and welcome these hearings.

I would be glad to respond to your questions.

[The prepared statement of Secretary Brock follows:]

STATEMENT OF
WILLIAM E. BROCK
SECRETARY OF LABOR
BEFORE THE
SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES

September 11, 1985

Mr. Chairman and Members of the Committee:

I would like, first of all, to thank you for the invitation to appear here today. I welcome these hearings and the opportunity they provide to review and assess our participation in the International Labor Organization (ILO) and to explore new ideas for improving that participation.

As Secretary of Labor, I serve as Chairman of the President's Committee on the ILO with overall responsibility for coordinating U.S. Government policy in that organization.

Although I had begun reviewing a number of ILO issues even before my confirmation as Secretary, it was really at this year's ILO Conference that I began to understand what a remarkable and unique institution the ILO really is. No other organization is quite like it, for nowhere else do non-government delegates--workers and employers--play such a vital and often decisive role.

Tripartism is the very heart and soul of the ILO. I saw that in my meetings and conversations in June with other delegates, with the ILO Director General Francis Blanchard and members of his staff, and as I participated in the Conference plenary debate on the changing nature of labor-management relations in today's world. This is an organization which has come a long way from where it stood just a decade ago when the United States filed its letter of intent to withdraw.

I do not think, however, that I need to spend much time today reviewing the past history of problems for U.S. participation--erosion of tripartism, selective concern for human rights, disregard for due process, and the politicization of the ILO. Suffice it to say that they were serious enough to fully justify, in my view, our withdrawal from the Organization.

There is also no doubt in my mind that there has been progress in the ILO since then--fragile progress, perhaps, but sufficient to cause the Soviets considerable anguish. Poland, for example, is quitting the ILO; Vietnam has not participated in years; and the entire Soviet bloc is threatening to withhold its ILO financial contributions. Although problems certainly remain, the extent of Soviet discomfort in the ILO is an excellent barometer of just how far we and the ILO have come.

I must add here that we have in the ILO a Director General and staff who are committed to the fundamental principles of democracy and tripartism--something we do not always find in United Nations (UN) organizations.

The substance of what I would really like to address today is captured best in the title of the report prepared by the GAO for this Committee and issued on May 3, 1984. That report is entitled: "Sustaining Improved U.S. Participation in the International Labor Organization Requires New Approaches."

The General Accounting Office (GAO) report notes that "the responsible agencies have improved the management of U.S. participation since rejoining the ILO in 1980. Overall objectives have been established and a system of regular consultations instituted among the tripartite representatives."

I am proud of the role which the Department of Labor has played in this effort. The United States' withdrawal from the ILO in 1977 provided great leverage for promoting reform in the ILO. But it has taken more than that to maintain a positive momentum. It has taken creative and consistent approaches to dealing not just with the political issues, but with the technical, financial, and coordination issues as well.

For example, the President's Committee on the ILO agreed as early as 1980 that it was important to play an active role in shaping the ILO's technical work--in short, to make its programs more efficient and better attuned to the needs of its members. But it is one thing to make that decision, and quite another to carry it out.

The implementation of our decisions, I think, has been our real strength. As the GAO report points out, the Labor

Department, in cooperation with State, Commerce, and OMB, took the initiative to launch an unprecedented review of the ILO's program and budget. This was not a one-shot effort. We have sustained it now over a number of years with positive results. This year, for the first time in more than a decade, the U.S. was able to support the ILO's budget proposals.

Coordination with friends and allies was another area we all agreed required more attention. I think we have made major progress in revitalizing the Industrial Market Economy Countries (IMEC) Group, particularly the IMEC Working Party on Standards. Deputy Under Secretary Bob Searby--who serves as the U.S. Government Representative to the ILO--and his staff frequently schedule visits with their ILO counterparts in industrialized and developing countries alike to discuss ILO issues. The Labor Attache corps are also used to maintain day-to-day contacts with the Labor Ministers of major ILO members.

Tripartite coordination here at home has been another area to which we have given considerable attention. I will not pretend that there have not been problems. But the mechanism of the President's Committee has continued to work--if not at one level, then at another; if not formally, then it has worked informally. The point is, we have continued to consult and coordinate.

The history of our participation in the ILO is one of remarkable cohesion and unanimity on the fundamental issues. The progress we have seen in the ILO has come about, I believe, in large part because we have, on a tripartite basis and over many years, forged a clear and consistent set of policies which the U.S. Government, the AFL-CIO, and American employers have pursued in a cooperative fashion.

We work best when we work together through consensus.

That same principle applies to another important aspect of our ILO participation--ratification of labor standards Conventions. On this very important question two things seem essential: first, we must be very clear on the legal implications of ratification; and second, we must move together through consensus now as in the past.

International labor standards play a crucial role in the work of the ILO. Perhaps no other ILO standards case has been more controversial and dramatic than that dealing with the Polish government's suppression of the Solidarity labor movement. Several UN agencies considered the issue; only the ILO pursued it with consistency. That is appropriate considering that the issue is basically a worker-rights one and that Lech Walesa's appearance before the 1982 International Labor Conference was the only time a representative of an independent union from a communist-ruled country participated in an international conference. Challenging communist violations of ILO standards is an effective way of achieving our goals in the Organization. Another goal is to assist ILO efforts in improving standards in cooperative developing countries thus encouraging the growth of free economic and social institutions. But some people have said that the credibility of these U.S. efforts is damaged by our poor ratification record.

In discussing this issue let me begin by distinguishing between the ratification of standards and the implementation of them, a distinction recognized by the ILO.

The ILO develops two types of international labor standards--Conventions and Recommendations. Recommendations cannot be ratified, yet they constitute an important part of the ILO's international labor code. Similarly, the ILO Constitution specifically allows federal states, such as the United States, in effect to treat as Recommendations those Conventions which do not pertain exclusively to federal issues.

Most importantly, the ILO's supervisory machinery is geared to ascertaining whether the objectives of international standards, both ratified and unratified, are reflected in the actual law and practice of each member state--in short, whether they are being implemented. Each year the United States Government submits reports through this machinery on one or more unratified Conventions, explaining our law and practice.

And even if a country does not ratify many conventions it is still responsible, as an ILO member, for complying with the basic principles of the labor rights Conventions, Nos. 87 and 98. It is also subject to complaints against it on violations of these Conventions. The complaints are processed through a special Governing Body Committee on Freedom of Association. The United States currently has a number of such complaints pending.

On the issue of the U.S. record on ratification, we have always maintained that the low number of U.S. ratifications is attributable mainly to our Federal system of government: most Conventions would require legislative action by the constituent States as well as (or instead of) by the Federal Government, and the U.S. cannot assume a treaty obligation under a Convention which might fall wholly or in part within State jurisdiction. Even with respect to those Conventions which are appropriate for action by the Federal Government, difficult questions arise.

In 1980, the President's Committee on the ILO established a sub-group to study the legal implications of specific ILO Conventions. The Tripartite Advisory Panel on International Labor Standards, known as TAPILS, is composed of legal experts from the Departments of Labor, State and Commerce, from the AFL-CIO and the U.S. Council of International Business, and from other U.S. agencies depending upon the particular Convention under discussion.

In its first two years, TAPILS met on numerous occasions to examine U.S. law and practice relating to several ILO Conventions and to review the legal implications of ratification or other appropriate action. In particular, it was charged with analyzing the degree of U.S. compliance with selected Conventions and examining the impact of ratification on existing and developing domestic labor law.

In February 1983, after two years of intermittent review and deliberation, TAPILS unanimously determined that there were no objections of a legal nature to ratification of two ILO Conventions:

> Convention 144 concerning Tripartite Consultation, which obligates the ratifying state to ensure effective consultation between representatives of government, employers and workers, at least once a year, on a variety of ILO activities; and
>
> Convention 147 concerning minimum standards on Merchant Ships, which obligates the ratifying state to establish, by national law and regulation and by encouragement of appropriate collective agreements, labor standards applicable to ships registered in their territory which would cover a variety of working conditions.

TAPILS forwarded its determination to the President's Committee on the ILO, which must decide whether to recommend to the President that he submit these ILO Conventions to the Senate for advice and consent.

Convention 147 is a maritime Convention and is, therefore, clearly within Federal jurisdiction. At a December 1983 meeting of the President's Committee, none of the participants expressed opposition to its ratification. No consensus emerged, however, with respect to Convention 144, and discussions have continued on the wording of a possible draft Executive Branch letter.

I have begun the process of scheduling a meeting of the President's Committee for this Autumn. I expect that an Executive Branch letter on Convention 147 will be ready for final approval at that meeting. I also look forward to the Committee reaching a consensus on how we should proceed with respect to Convention 144.

As for other ILO Conventions, and particularly the important human rights standards, it is my intent to actively promote research and dialogue on the prospects for U.S. ratification. However, I feel strongly that this process must continue to involve the objective examination by legal experts of the implications of individual, specific ILO conventions--to be done through the TAPILS mechanism.

Finding answers to the important questions surrounding U.S. ratification requires care and tripartite good will. With the continued cooperation of those organizations represented here today, I am hopeful that this process can lead to mutual understanding.

What can we say of the future? Again, turning to the GAO report, I agree we must search for new approaches to sustain our improved participation in the ILO.

As one example, the United States has recently offered to the ILO a $100,000 grant for a project on labor/management cooperation in training and retraining programs. The purpose of this project is to study successful examples of labor/management cooperation in defining training and retraining needs and programs in advance of the introduction of new technology or other structural adjustments. The project will also demonstrate to the ILO, I hope, that it can draw upon the vast resources of its private sector members to help carry out its technical programs.

The Department is also completing a one-year study of new directions in international labor standards which we hope will be useful in helping to shape ILO standards activities for the next decade.

As I indicated earlier, I have taken steps to schedule a meeting of the President's Committee on the ILO. I believe that body can be more effectively used at all levels to coordinate U.S. policy, share information, and to review and evaluate ILO programs.

The Congress also has an important role to play. I am aware, Mr. Chairman, of the role you have played, particularly during the 1983 Conference when we succeeded in stopping an anti-Israel resolution. I would like to explore the possibility for more regular exchanges of ideas and information between the President's Committee and the two Houses of Congress.

I am absolutely committed to do everything we can to make our participation in the ILO as productive and effective as possible, and to working closely with you, other members of this Committee, as well as all members of the President's Committee.

Mr. Chairman, let me again say how much I welcome these hearings. I would be happy to answer any questions you and the members of the Committee may have.

Thank you.

The CHAIRMAN. Well, thank you, Mr. Secretary. We appreciate the articulate statement that you have given, and we will put the complete statement in the record—you have summarized—and make the record that way.

Now, it has been suggested that a major impediment to the U.S. ratification of ILO conventions is that in most instances, the subject matter is considered more appropriate for state action than for Federal action.

Given the current state of our jurisprudence, with Federal law being a predominant force in practically all aspects of labor-management matters, doesn't this argument lose some of its force?

Secretary BROCK. Senator, the right that Congress has in certain areas to preempt State laws does not extend to constitutional preemption. The Constitution is abundantly clear in its reserve of certain, very specific responsibilities for State action. And I do not think that has changed at all. I think the fact that the Federal Government is more interventionist in some areas may be a fact of life——

The CHAIRMAN. So, that is a problem.

Secretary BROCK [continuing]. But I do not think it changes the question.

The CHAIRMAN. Now, Mr. Secretary, Secretary Shultz has testified that, "Our leverage in the ILO is somewhat hampered by the fact that the United States has not improved its own record of ratification of ILO conventions over the past 30 years."

Do you think that the U.S. record on ratification impedes our effectiveness at the ILO?

Secretary BROCK. It is hard to answer that. My own judgment—and this is based not on experience, but on listening to others who have been more directly involved—would suggest that, while we have received some criticism for the lack of ratification, it probably has not changed the substance of our effectiveness. We have been successful in resolving a number of issues to our satisfaction. We have not lost on a number of issues where we could have lost if this were a major element in the decision.

It is hard to say that there are areas where we could cite a specific case where we lost because of our ratification policy.

It, obviously, has affected the situation in the sense that we are criticized, and the absence of ratification is noted, but I do not think it has changed very much in substantive terms the progress we have made in the ILO.

The CHAIRMAN. Based upon some of the background material which I have reviewed in this matter, it appears that aside from the promulgation of standards, the ILO has the potential for rendering technical assistance to member countries. For example, it has been suggested that the ILO could tap the resources of the private sector in carrying out tripartite seminars in developing countries in such areas as safety and health, mediation and conciliation.

Has the United States taken any initiatives to promote these and other instances of voluntarism through the ILO?

Secretary BROCK. I think the one example that I would cite, I mentioned in my testimony, where we gave a grant to the ILO to demonstrate the capacity of the private sector to support those kinds of technical activities.

Bob Searby might have some other examples, as well.

The CHAIRMAN. Ambasssador Searby.

Mr. SEARBY. Mr. Chairman, the question touches upon what I consider to be a major tactical factor in our overall approach to the ILO.

What we did during the analysis of the program and budget exercise, where we did something which GAO acknowledged was distinctive. That is, we took the proposed budget of the ILO from the Secretariat early on, 3 years ago, we analyzed it, and we rewrote—we wrote an alternative budget, about 120 pages long, in which we were showing where they could pick up efficiencies and where they could emphasize the types of programs we thought were more efficient in developing the private labor-management cooperation and developing independent institutions, especially in developing countries. That led to a couple of experiments. One thing we wanted to have them do was use the tripartite structure in the technical programs, to get volunteer experts from the different business and labor organizations. For example, in occupational safety and health, that would be backed up by staff Secretariat from Geneva, when it came to different types of field seminars. They did a few of these, and they were very effective. The progress has been slow, but they have agreed that they will try a few more in this field. One was in occupational safety and health in the forestry industry in West Africa. It was very well received.

The CHAIRMAN. Thank you.

Mr. Secretary, it is my understanding that of all of the 160-odd ILO conventions, the AFL–CIO is most eager to see some action on what are viewed as the cornerstone conventions—that would be No. 87, the Freedom of Association Convention, and No. 98, the Application of Principles of Freedom of Association.

Could you tell us the Labor Department's viewpoints with regard to those two conventions, No. 87 and No. 98?

Secretary **Brock**. Mr. Chairman, I think the basic feeling we have is that—well, I have already expressed the caution about the state matter—the most important question is: Can we find a way to move affirmatively in these areas, with a consensus? The matter of conventions has been debated in this country since the days of the Bricker amendment; it is a contentious issue. And it is our feeling that if we are going to move, we have to be very careful in being sure of our legal foundation and of the fact that the steps we take are affirmatively supported by the participants.

We do believe in the tripartite process, and that implies a desire for consensus on the part of all the parties that participate. So, we have expressed the willingness to take these questions to the President's committee, to actively promote the study, and hopefully the resolution of these matters. But I do not want to say that we feel that we can impose that kind of solution. It is something that has to be one that is mutually arrived at.

The **Chairman**. OK. Now, you indicated that the United States, even without ratification, is implicitly bound by the principles of freedom of association embodied in convention Nos. 87 and 98. Does that mean that complaints can be filed against the United States in the ILO, because of our Nation's laws or practices—some may contend may not be in compliance with the principles of freedom of association.

Secretary **Brock**. They can continue to file complaints.

The **Chairman**. Have there been many complaints filed against the United States in this area?

Mr. **Searby**. No; there are not, Mr. Chairman.

Let me distinguish convention 87 from all others. Unlike all other conventions, unratified conventions, a member of the ILO is still liable, subject to complaints against is on the essential convention of freedom of association, which is the essence of the ILO.

What occurs—and this is what occurs with us—is we implement it, we live it, even though we have difficulty within our federal system having ratified it; we come under a complaint through the governing body, through a special complaint procedure through the ILO governing body's Committee on Freedom of Association. So that is where complaints have come to us.

The two complaints—there are not that many complaints—but the two that we have had are the PATCO incident, which was a complaint against the U.S. Government, and we cooperated fully with the ILO in supplying information, not only comprehensive information, but in breaking a record of any government responding in a complaint. Normally, it takes about a year; we did it in 9 weeks. The second is the Capitol Employees Organizing Group. The complaint was initially filed, having to do with the Senate restaurant workers.

The **Chairman**. That is embarrassing. [Laughter.]

Mr. **Searby**. The complaint is now pending on the House restaurant workers at the ILO; so it is those two.

The **Chairman**. Those are the two. Well, since you have had relatively few complaints, do you think that the rest of the signature countries understand that and respect the U.S. position?

Secretary **Brock**. I think they understand that we have greater freedom of association in this country than any country in the world. It is very hard for others to criticize us when we are doing so much better than any of them.

The CHAIRMAN. I think that certainly is true.

I just want to tell you, Mr. Secretary, I find it really encouraging to see from your testimony that you are in the process of reviving the President's Committee on the ILO after the period of dormancy. I think that really needs to be done, and I would like to see some real efforts made to resolve what really are very touchy, very important and very difficult conflicts among the tripartite groups, as to the matter of ratification. In particular, you mentioned in your testimony at one point that it appeared that a consensus was emerging with regard to ratificition of convention No. 144. And just to clarify the record, would it be fair to characterize the work and structure of the President's Committee on the ILO and the Tripartite Advisory Panel as an effort to implement the thrust of convention 144 on Tripartite Consultation?

Secretary BROCK. Absolutely. It is the perfect illustration of tripartitism as we practice it here. I should have told you, Mr. Chairman, we have a specific date of our first meeting. It is October 17. So, we will be getting together fairly shortly on this.

The CHAIRMAN. OK. And as I understand it, one of the political advantages of going ahead with the ratification of this particular convention is that the Soviet countries probably would not be able to ratify this convention, and hence, that would give us at least an argument against the Communist bloc.

Would that be a fair statement?

Secretary BROCK. Absolutely, unless they want to do what they have done before, and sign something without meaning it.

The CHAIRMAN. Why would it be so difficult for the Soviet Union to ratify convention No. 144?

Mr. SEARBY. Mr. Chairman, actually, it is a curious fluke. The Soviets are in the habit of being casual when it comes to these conventions, as others, and then doing what they wish. But on 144, during the debate, I believe sometime in the 1970's, during the debate at the ILO, the Soviet representative put an argument on record that the 144 Convention on Tripartite Consultation was not acceptable within their system. And once it was on record, they have had great difficulty getting it off, and so they are stuck with it.

The CHAIRMAN. I see. Well, I have thrown the challenge out to the Secretary of State to combine his Department with yours to see if there are some internationally sound and domestically sound legal ways that we might be able to ratify these conventions without having a disruption in our domestic labor laws, and without having the continual fighting that appears to go on with regard to domestic labor laws.

The Secretary of State did come to the conclusion that if we are going to be able to do anything that comes close to that, we are going to have to have a really broad bipartisan consensus of all three groups in this tripartite system—labor, management, and Government—in order to get something done.

So, I would be very interested in seeing what you can come up with, and seeing if it is a worthwhile exercise at all, because I personally think it is, although I see a lot of problems, both ways. But

I think it is worth our effort to do it, because I find in my visits to Geneva and the ILO that this is an extremely important organization in the eyes of the rest of the world and not merely as understood here in our country, but in the rest of the world, everything that goes on there is pretty well publicized and paid attention to. And we are somewhat hampered in our participation because of our own failure to ratify these conventions.

So it is important that we see where we can go on this thing, and that is one reason why I am holding these hearings. Naturally, the ultimate hearings have to be held by the Foreign Relations Committee, and we fully recognize that. But on the other hand, this is something that really affects what our committee does, and much more so than perhaps any other committee.

So we appreciate your effort in that regard.

Secretary BROCK. I agree, Senator, very much. and I think part of my comfort stems from the fact that there are few men anywhere that I have greater respect for than George Shultz. He is a marvelous individual and a very thoughtful person, and we can work very comfortably together, and will try to do that.

The CHAIRMAN. Well, thank you. And I would like to have a report from both of you as to what your recommendations are, at least tentative recommendations, and keep me and the rest of the members of this committee advised, if you could.

Secretary BROCK. We will do that.

The CHAIRMAN. Let us turn to Senator Metzenbaum at this time.

Senator METZENBAUM. Mr. Secretary, it is nice to see you again. I came in late, but I read Secretary Shultz' testimony and pretty much finished reading all of yours. And I get the impression that the ILO discussion this morning has been solely related to our country and the Soviet Union. I am concerned about the right of free association as it exists in places like Chile, places like the new African nations, who gained their independence 20, 25 years ago. South Africa is high profile; we know something about that. And I am concerned about some of the new African nations and what is happening there. I am concerned about what the ILO is doing in South America or in Southeast Asia. And I am wondering whether or not you or the gentleman with you, whose name I do not know, are in a position to really advise as to what is happening in those countries, putting aside the United States and the Soviet Union for the moment.

Secretary BROCK. Well, I think I could respond generally, and I might ask Bob Searby, our Deputy Under Secretary, to be more specific, if he wishes.

But the point is well taken, Senator. If you want to look at the ILO, it is not simply a meeting ground for the United States and the Soviet Union. Our purposes there go much beyond that. We would hope that through a process of the kinds of communication and coordination we can achieve through an organization like this, that we can see an improvement of worker conditions throughout the world. We do have to face competition from a number of states that do not practice basic human rights in their labor policy. There is nothing close to tripartitism, or nothing close to free collective bargaining, such as we believe in here. And it is, I think, clear that one of the long-term objectives in an organization like the ILO, or at least, our purpose in supporting it, is to improve that circumstance, whether it be in Latin America, or Africa, or anywhere else.

So the point is well taken. Insofar as the progress being made, my own sense is that it is pretty slow. Maybe Mr. Searby would like to add his own thoughts to that.

Mr. **Searby**. I think it is important to at least mention some of the cases, because the main reason why, in testimony, we see so much discussion of the Soviets is not only because of their large bloc, but because they have been assaulting the ILO due process machinery lately.

Senator **Metzenbaum**. They have been what?

Mr. **Searby**. They have been assaulting the due process machinery. And in the case of Poland, they requested a special privilege.

However, the vast majority of cases have to do with problems in developing countries most of the time. And I think there are several cases where the ILO, following due process—which is a very complex due process in the ILO; it is one of the few U.N. agencies that has it—has been able to establish some form of dialog and fact-finding missions in Chile—a country that you mentioned—and, for a time, at least, we saw a bit of improvement. But the fact is that the ILO then becomes a place where the Chilean worker organizations have an opportunity to express, either directly or through the ICFTU, their concerns, as does the Government.

Another one is Turkey. Turkey is a very complex case that has been going on for some time now. The Turkish Government has both, at times, refused cooperation, and at other times, has accepted fact-finding missions. But it is a mixed case. There are mixed records there—but there has been some progress, nonetheless.

There are hundreds of cases every year. Several of them are pursued and become major ones. But those are a few.

Senator **Metzenbaum**. I guess what I am really asking is how effective has the ILO been, not in what I call the high-profile countries—the only time we hear about labor unions throughout the world is when they are on strike—but on the day-by-day relationships, in countries that are not particularly high profile, unless there is an overthrow or a coup, or something major—what is happening, for example, in Uganda, in Tanzania, in Ghana, in other parts of South America? What is happening in Korea; what is happening in Thailand? That is what really seems to me to be a very important factor, as far as this Senator is concerned, as to the total value of the ILO. Just to get into a rhubarb with the Soviets concerning Poland or Czechoslovakia is not enough. I am concerned about the millions of other workers throughout the world, about whom we hear very little.

Mr. **Searby**. I think we can distinguish the complaint machinery or the supervisory machinery from the technical assistance machinery, and hope there is technical assistance that goes to the development of better systems in some of those countries.

When it comes to the rights or the conditions in many of those countries of organized labor, of trade unions, I would defer to the representatives of our own autonomous labor organizations.

But certainly, the ILO, even if organizations are not free in their home countries, many of the leaders—even if they are in exile—

have an opportunity to have a voice at the ILO, and the ILO, through its year-around supervisory machinery, does pursue it. It is not just simply a report, as you do get in many other U.N. organizations.

Senator METZENBAUM. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Simon.

Senator SIMON. I thank you, Mr. Chairman, and Mr. Secretary. I am sorry I was called out; my questions may have been answered.

I would simply add, as I read your statement over, it seems to me you are doing the right thing, trying to move constructively here, to use this international organization to protect the rights of the working men and women all over this world, as well as the United States.

I would simply commend you, and I have no questions, Mr. Chairman.

Secretary BROCK. Thank you very much, Senator. I appreciate that.

The CHAIRMAN. Senator Dodd.

Senator DODD. Thank you, Mr. Chairman.

Let me apologize to you, Mr. Chairman, and to Secretary Shultz, in his absence, and to Lane Kirkland, before he gets up. This is a day in which I have Paul Volker and Ed Meese before the two other committees on which I serve, Banking and Foreign Relations.

Let me commend you, first of all, Mr. Chairman. I sit on the Foreign Relations Committee, and I am sure there are some who, as has been pointed out, would question whether or not this is proper jurisdiction for this committee, but I happen to agree with you. I think it is an issue that does cross-pollinate, if you will, between this committee and the Foreign Relations Committee. Thus, I think it is highly appropriate and worthwhile to have the Secretary of State before this committee on this kind of an issue.

I am curious to get your comment, if I can, Mr. Secretary—and I would have asked the Secretary of State the same thing, with respect to the administration's sense of priority about the conventions. There are a number of them which have yet to be ratified, and I wonder if there is any pecking order at all, Mr. Secretary, and if, in fact, as you have stated and as the Secretary of State has stated, that there is every reason for us now to be active participants in the ILO, after the problems of 1977, and after rejoining in 1980. There are a number of conventions like the convention banning slavery, which we ought to have little difficulty with here. I would hope that this convention is not a matter of any significant debate. And yet, it is still hanging out there. What is the pecking order? We can deal with some of these things, I suspect, on the consent calendar, or nearly a consent calendar, if that were procedurally proper. It also seems to me we ought to try to clean up the slate a little bit. There may be some that are a little more dicey, because of the question of whether or not due powers and due rights are being extended. But yet, it seems to me a number of others can be dealt with in order to at least put us in a better position in terms of our own perspective within the international community when it comes to human rights questions and so forth.

I wonder if there is any priority list you have and any suggestions you would make as to the ones that we could push for this fall?

Secretary BROCK. We have not tried to do a complete ranking, but the two fundamental ones seem to be 87 and 98, freedom of association, as they are generic in their approach and things that we obviously believe we ought to comport with.

That is the kind of question that we would take to this commission, which will be meeting in October, for their consideration. Those are two that I have personally said that we would like to actively promote the study of and see what we can do.

Senator DODD. I presume that if we could take the outstanding conventions that have not been ratified, and if we could get a report to this committee and one to the Foreign Relations Committee, which prioritizes that list of those conventions which could be, in the administration's and the Commission's view, ratified immediately, without any reservation or concern whatsoever, and then those to which there may be a need for more study or amendments to them or whatever, additional steps might be taken.

I think it would be of tremendous assistance if we could clean up this list and get down to the real ones that we have to work at and get rid of the ones that are noncontroversial, and avoid a problem, internationally.

Secretary BROCK. I will submit that question to the other members of the Tripartite Commission.

Senator DODD. I thank you, Mr. Secretary.

Thank you, Mr. Chairman.

The CHAIRMAN. Well, thank you, Senator. I think that is the purpose of this Tripartite Commission. We ought to really look and see how many of these conventions we can ratify without controversy, which ones are in the middle, and which ones are very controversial, and then let's see what we can do. But I would like to see a way brought about where we can ratify these two controversial amendments, if we can.

And I know there is much concern about the ratification of those, and with much justification, because I have done an analysis, and if ratification amounts to the elevation to the point of a treaty, which many agree it would, there would be major disruptions in our domestic labor laws. And that is a major concern. But there has to be a way around that, and I would like to, especially if we have people of good will in all of the tripartite positions working together, it would give us even more leverage at the ILO and in international affairs that are very important that come from the ILO.

Secretary BROCK. Well, I am not sure that I can elaborate, Mr. Chairman, other than to say what I have said earlier, and that is that not only will we discuss this matter with the Commission itself, but I invite your own active participation and members of this committee in working with us to look at these questions and to see how we can proceed best.

The CHAIRMAN. Well, thank you. I really appreciate the work that has been done at the ILO. I believe that the tripartite system really works well. And I want to commend you and your organization, Ambassador Searby, and others, for the work that they have done.

And we really appreciate your taking time out of what I know is a horrendous schedule to be with us today.

Secretary **Brock**. Senator, we all have horrendous schedules. I commend you for the hearing, and I thank you for letting me be here.

The **Chairman**. Thank you so much. Thank you, Mr. Secretary, and thank you, Mr. Searby.

We will now turn to the President of the AFL-CIO, Mr. Lane Kirkland, and accompanying Mr. Kirkland will be Mr. Irving Brown, who is the director of the international department of the AFL-CIO. I would like to welcome Mr. Ed Hickey to the committee as well. We are honored that you would be here today. We think this hearing is very important, and we know that the labor participation at ILO is particularly significant—and I have personally observed that, and I think without the efforts of your organization and in particular Mr. Brown, here, that the ILO would have been disastrous in some ways in the past—it has been, anyway, in some minor areas—but I think your organization, and in particular Mr. Brown, has really done a tremendous job through the years at the ILO, which I find to be a very, very important organization in world affairs.

I appreciate the special interest that you have in this, and the privilege of working together on some of these serious problems.

So Mr. Kirkland, we will turn the time over to you for your statement.

STATEMENT OF LANE KIRKLAND, PRESIDENT, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, ACCOMPANIED BY EDWARD J. HICKEY, JR., MULHOLLAND & HICKEY, WASHINGTON, DC, AND IRVING BROWN, DIRECTOR, INTERNATIONAL AFFAIRS, AFL-CIO, WASHINGTON, DC

Mr. **Kirkland**. Thank you, Mr. Chairman.

My name is Lane Kirkland, and I am president of the AFL-CIO. I have with me today Irving Brown, the director of the international affairs department of the AFL-CIO, and Ed Hickey who has represented the U.S. workers on the very important committee of the ILO on the application of conventions for a considerable number of years now.

I appear here today on behalf of the workers of the United States represented in the ILO.

I welcome this opportunity to appear before your committee to give testimony on the question of ratification of conventions of the International Labor Organization. The holding of hearings of this nature has long been overdue, and I wish to compliment the chairman on having the initiative to institute such hearings. I do hope that our other partners in the U.S. tripartite delegation share my views.

It should be pointed out that the ILO is singular in this respect, since it is the only tripartite organization among the members of the U.N. family. That explains why the United States has been more successful in the ILO than in the United Nations as a whole, on some of the basic elements of American foreign policy, especially in the general field of human and social rights, as well as in the implementation of the resolutions and policies adopted by the ILO.

ILO conventions, which now number over 160, involve the basic standard-setting activities of the organization. They cover not only freedom of association, but also the right to collective bargaining and the whole system of tripartism. The ILO is the only international body where labor, employers, and governments participate on an equal basis in these vital activities, which affect and attempt to solve the basic economic and social problems of our times.

These standard-setting procedures of the ILO cut across all the economic and social practices which affect man's condition in the world. Included are conventions of freedom of association, forced labor, slavery, discrimination in employment, tripartism, health and safety, and so forth.

As members of the ILO we all participate in the work of the annual ILO conference in June where these conventions are adopted—labor, employers and government. Conventions are adopted only after long discussions and deliberations and usually after two readings in two succeeding annual conferences. They can be adopted only by a two-thirds vote. What is most important is the fact that conventions are not adopted only to remain on paper as pious wishes, as in the case of most U.N. decisions and resolutions.

Once conventions have been ratified, the ILO regular supervisory procedure comes into force through its Committee of Experts and its Conference Committee on Application of Conventions, which provides the mechanism whereby any violations can be judged and decisions taken to evaluate how these conventions are being applied. Although the ILO is no tribunal with powers to impose its will, the force of these judgments can have worldwide implications. This has been demonstrated recently, in the case of the report of the Commission of Inquiry of Poland's violation of freedom of association and its suppression of a free trade union movement.

This brings me to the discussion of my primary purpose in appearing here today, which is to bring to the committee's attention the poor ratification record of the United States. Actually, "poor" is too mild a term—it is deplorable. Although we regularly participate in approving conventions at the ILO level—labor, employers and the government, as I have already pointed out—of the countries with comparable years of ILO membership only one—and that is El Salvador—has fewer ratifications than does the United States.

By contrast, the Western European members of the European Economic Community have an average of 70 convention ratifications, and some have more than 100. Of more critical importance is the fact that a nation that prides and proclaims itself, rightfully so, as a champion of human rights has ratified none of the basic human rights conventions.

Our failure to ratify such conventions as those on tripartism, freedom of association, collective bargaining, forced labor and slavery has weakened our position not only in the ILO, but throughout the world. It hampers and obscures our role as the leading spokesman for freedom, democracy, and human values in the world, and places a propaganda weapon in the hands of the enemies of those values.

The familiar excuse offered over the years for this record of nonratification—that it is due to our federal structure—is vastly overdone. Other comparable federal countries have ratified a respectable number of conventions—by way of example, Australia, 43 conventions; Canada, 27; the Federal Republic of Germany, 66, and India, 34. It cannot be reasonably denied that a number of conventions could be ratified on the basis of federal law and practice without intruding on the jurisdiction of the several States. Examples include conventions dealing with discrimination in employment, tripartite consultation, and others.

Moreover, the federal structure is not the real reason for our nonratification record. Rather, it stems from the resistance in the past by employer organizations because ratification would involve a supervisory scrutiny of our democratic laws and practices and involve some of our domestic labor standards. Their position on tripartite consultation is a classic example. This convention poses no Federal—State conflict of jurisdiction whatsoever. Their real argument has been that it would open the door for other ratifications. Such an argument insults the integrity and judgment of the branches of the Government which must deal with consideration of ratification, including the U.S. Senate, by a two-thirds vote. If such an evaluation on the merits can hurdle the obstacles presented in all of these bodies, they should be ratified whatever their number.

We are now engaged in the ILO in a continuing struggle over standard setting. The Soviets are attempting to dismantle these procedures, as well as to weaken one of the most prestigious bodies in this field, namely, the Committee of Experts dealing with the application of conventions and recommendations. We have been successful so far in blocking these maneuvers, but for how long? Our position would be greatly strengthened if the United States had a better record on ratification.

The United States has been subjected to an ever-increasing barrage of stinging criticism for its ratification record—not only from the Soviet bloc, but also from our Western European allies and Third World countries. Our friends throughout the world cannot understand our failures to ratify not only conventions on freedom of association and collective bargaining, but such conventions as forced labor, which we helped to draft, and slavery. Isn't it a mockery before the world that a nation which went through a civil war over the issue of slavery has not ratified an international convention on slavery?

It is even more puzzling to our friends, inasmuch as we implement these conventions in practice in the field of industrial relations, employment, and civil rights.

As a matter of fact, congressional legislation concerning special trade preferences for developing countries includes reference to certain criteria that must be adhered to if such preferences are to be granted under title 5 of the Trade and Traffic Act of 1984.

Eligibility for such preferences includes the term "internationally recognized workers rights," which are as follows: (A) the right of association; (B) the right to organize and bargain collectively; (C) a prohibition of the use of any form of forced or compulsory labor;

(D) a minimum age for the employment of children; and (E) acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health.

These five points correspond essentially to the basic international labor conventions, especially those dealing with freedom of association and forced labor. Congress, having so affirmed these universal principles in that legislation, ought to at least be prepared to debate and act upon the qustion of ratification of the leading international instruments of those principles.

Additionally, from a purely political standpoint, the excuses offered by the United States are wearing so thin that these friends and allies in the ILO are becoming increasingly embarrassed and even annoyed with the "moralistic" criticism of the performance of other countries under ratified conventions, when we continue to do nothing ourselves about ratification.

By way of example, the worker member of The Netherlands of the Committee on Application of Standards at this past June conference, in lamenting the failure of the United States to improve its record on ratifications, concluded his statement with the following question: "What would this Organization, and especially this committee, look like if all member states failed to ratify all conventions and followed the example of the United States?"

Aside from this political fallout of embarrassing our friends in the ILO, there is the continuing effort by the Soviets to bar us from participation in ILO Conference Committee and Plenary discussions on human rights violations by bloc countries—notably Czechoslovakia, the Soviet Union, and Poland—in which we take a prominent part. Clearly, this represents a continuing threat to our role and influence in that body.

The failure to ratify conventions already prevents the United States from introducing any complaints against any other government on these conventions. The United States is thus reduced to being able merely to associate ourselves with other governments on many issues that are and have been vital to the national interest of this country. Even if there is no ratification, a member state is obligated under the ILO constitution to report periodically on the extent to which national legislation and practice conform with the convention.

All this, of course, does not and has not precluded the American labor movement from being in the forefront on some of these world issues through our association with other free trade unions on a bilateral basis and through the International Confederation of Free Trade Unions on a multilateral basis.

The argument that ratification of human rights conventions would create new rights for employees which they do not now have is harmful to the image of an America that has been in the forefront of the promotion and defense of fundamental rights of freedom of association.

A former Solicitor of the Department of Labor affirmed this point. His legal position was that these conventions—87, 98, and 105—raise no valid constitutional questions and would create no new rights for employees in the United States.

Apologists for nonratification have argued both (1) that ratification is unnecessary because our laws and standards are already equal to or superior to the terms of these conventions, and (2) that ratification would necessitate changes or improvements in our existing labor laws. As to the latter point, it scarcely affords the grounds for a refusal to submit these conventions to the mature judgment of the Senate on their merits. Surely, it strains credulity to suggest that a two-thirds vote of the Senate is a weaker barrier to imprudent action than the simple majority of both Houses required for amendments to our domestic laws.

In conclusion, Mr. Chairman, we believe for the reasons which I have given you that it is imperative in the interests of our global obligations and aspirations to put an end to this stagnation of U.S. ratification of ILO conventions and seriously attempt to ratify some of these basic human rights conventions. It would contribute so much to the worldwide effort of the free and democratic societies whose leaders are now involved in a struggle to win the minds and souls of the people of the world and offer some hope, especially to those who are now living in oppression under dictatorial and totalitarian regimes.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Kirkland.

One of the objections often asserted against the ratification of the ILO conventions is that the House of Representatives would be deprived of its legitimate constitutional concern or role of participating in the enactment of labor laws. The argument goes something like this, that the Senate's ratification of a convention under article VI of the Constitution renders it the supreme law of the land, superseding previously enacted statutory law, with which the convention may conflict.

Do you think that this is a legitimate institutional concern, and should the House be deprived of what they consider to be a constitutional responsibility, or a rightful constitutional responsibility?

Mr. KIRKLAND. In practical terms, Mr. Chairman, there is no way to deprive the House of that right. Anybody who thinks for a moment that one can use these conventions as a device to evade the normal legislative process in the United States is out of his mind. I do not know of any possibility or any grounds for anyone ever entertaining any notion that, OK, we are going to change this law, let's do it through the treaty process, let's do it through the ratification process, or let's go over to Geneva and line up some forces and get a provision in the convention that will change American law. That is a fallacy, a delusion, and I would be out of my mind to entertain for a moment the notion that I could affect American law by getting a two-thirds vote of the Senate rather than following the route of the simple normal majority in both Houses of the Congress. We already have certain impediments in the Senate, as the Senator very well knows; even a simple majority is not enough to change some of our basic laws; we have to get 60 votes. And this requires 67 votes. So I think it is a chimera, sir.

Senator SIMON. Would the chairman yield?

The CHAIRMAN. Surely.

Senator SIMON. Thank you. Unfortunately, I am going to have to go. But it just seems to me that you hit the nub of the question in response to the chairman's question. The objection is on the basis that somehow, we are going to have some people in Geneva changing American law just on its face is just not the reality. And I think you have hit it right on the head—as usual, I might add, Mr. Kirkland.

Thank you, Mr. Chairman.

The **Chairman**. Well, let me just say this, that I hope you are right. There is a considerable body of legal opinion that says that it has a potential to affect domestic labor laws, and——

Mr. **Kirkland**. Effectuation of a convention, since these conventions do not cover all the details of enforcement.

The **Chairman**. Sure.

Mr. **Kirkland**. It has to be followed by the normal legislative process.

The **Chairman**. I have a feeling that you are probably right in some respects on that. But shouldn't we be sure that, in considering whether or not to ratify a convention, that the convention be found not to be self-executing? In this way, you are assured of having both the Senate and the House participating fully in any change in labor laws.

So, it is a legitimate question; whether you are right, or those who raise the question are right, it is a legitimate question, and it is one that, as chairman of this committee, I have to be very concerned about.

Mr. **Kirkland**. Somehow I have the notion, Senator, that the day when I can get 67 votes in the Senate to change the Taft-Hartley Act, I am going to get it changed.

The **Chairman**. I have a feeling you will, if you get 67 votes. And I know you work very hard——

Mr. **Kirkland**. I do not anticipate that happening in the very near future. [Laughter.]

The **Chairman**. I have to admit that you are a very formidable force, as are all of your companions.

Now, Secretary Brock did testify that he is taking steps to revive the President's Committee on the ILO and the Tripartite Advisory Panel. I presume you agree with me, that is a laudable idea, a step in the right direction.

Mr. **Kirkland**. Yes; the establishment of that committee, in fact, was one of the outgrowths of the debate during the period when we were edging up to departure from the ILO, and I think was one of the beneficial consequences of that action.

You know, the previous testimony has stressed the fact that we had certain problems in the ILO, and that is true; that they have been, to a degree, ameliorated, and that is also true, to a degree. Serious problems still remain. I am far from satisfied.

The **Chairman**. That is right.

Mr. **Kirkland**. The federation is far from satisfied. But that was only half the picture. From our point of view, from the trade union point of view, our exasperation and frustration at that time that led us to support disaffiliation from the ILO also encompassed our concern about the bland and indifferent attitude of our own Government in approaching its responsibilities in the ILO. And the creation of that committee, which was partly done at our urging, was an attempt to rectify that circumstance. I think that committee, during the time it was active, was effective in enabling us to chart a common strategy, at least on the basic issues with which all three parties are in fundamental agreement, and it has been effective. I think it is useful to have it revived.

The **Chairman**. I would assume, then, that the AFL-CIO would be willing to support the efforts of the committee and the Tripartite Advisory Panel to reach agreement on convention ratification?

Mr. **Kirkland**. We, certainly, would support an effort to reach agreement. I do not think the decision should be made until the opportunities for agreement have been exhausted.

Certainly, the position that emerges from it is strengthened if it does represent a consensus. But, having said that, sir, I do not subscribe to the proposition that any party there ought to have an ultimate veto.

The **Chairman**. No; I agree with that, too. Now, you note——

Mr. **Kirkland**. And the absence of a consensus, ultimately, after every opportunity has been explored, should not be an impediment to the pursuit of the objective of trying to get ratification.

The **Chairman**. Sure. Well, I think in order to ratify the conventions that you would like to have ratified, it is going to take a consensus. And I think that can be reached under certain circumstances. We are going to put the best legal minds and other minds together to possibly see if that consensus can be reached, and I will do everything I can to see what can be done, as well.

I note that Secretary Brock recommends that the President's Committee and the Tripartite Advisory Panel pick up where they left off with conventions 144 and 147—144, on tripartite consultation, and 147, which is on merchant shipping. Personally, I think both of those should have been ratified long ago, regardless of some of the problems with some of the rest of the conventions.

I presume you agree with that, but do you think that is a preferable strategy as opposed to considering conventions 87, 98, 105, and 29?

Mr. **Kirkland**. I do not think that is the preferred strategy, sir. If all that came out of these labors were the ratification of convention 144, I would regard the effort as a failure.

I think convention 144 ought to be ratified, certainly, and we would support ratification of it. But if that is what we did instead of facing up to the ratification of the basic, most important human rights conventions, I would say that it was a cop-out and an evasion of our responsibility.

The **Chairman**. I note in your testimony that you allude to a former Solicitor of Labor taking the position that to ratify conventions 87 and 98 on freedom of association, and convention 105 on forced labor, would create no new rights for individuals in the United States.

In a similar vein, the AFL-CIO Executive Council last May adopted a policy statement, as I understand it, which observed that to ratify these conventions would not "require modification of existing legislation."

Could you tell us who that Solicitor was, and was his or her opinion ever formally published or adopted by any administration?

Mr. **Kirkland**. I believe that that was Mr. Kilberg, who was Solicitor when John Dunlop was Secretary of Labor.

The CHAIRMAN. Do you know if that was ever published or adopted by the administration at that time? And I do not know about this. I am just asking these questions.

Mr. KIRKLAND. No; I do not, but I also would refer you to a briefing paper that was prepared by the Office of the Solicitor in October 1980.

The CHAIRMAN. Let's put that in the record at this point.

Mr. KIRKLAND. Yes; I have a copy of it here.

The CHAIRMAN. We will put that in the record without objection.

[The document referred to above follows:]

U.S. DEPARTMENT OF LABOR
Office of the Solicitor
WASHINGTON, D.C. 20210

October, 1980

Briefing Paper

ILO Convention 87 Concerning Freedom of Association

Executive Summary

ILO Convention No. 87 was deliberately drafted as a precise yet general statement of the fundamental right of association. It was not intended to serve as an international code of regulations. A State which accedes to the Convention is obligated to take all necessary measures which are appropriate in its own context in order to ensure that workers and employers may freely exercise the right to organize.

On August 26, 1949, President Truman submitted this Convention to the Senate for advice and consent to ratification together with a letter from the Secretary of State noting that Convention No. 87 affirms the pre-existing guaranties which are provided under the first, fifth, tenth, and fourteenth Amendments to the Constitution of the United States. The coordinated view of the Executive Branch was that ratification would not entail the obligation to enact new legislation nor to revise existing law since the United States was in full compliance with the terms of the Convention. The Convention is still technically before the Senate since it was never withdrawn (although hearings have never been held).

We have attached a Memorandum of Law prepared by the Office of the Solicitor which considers the question of whether there are potential inconsistencies between the Convention and the Labor Management Reporting and Disclosure Act of 1959 ("LMRDA") and the Labor Management Relations Act of 1947 ("LMRA").

Although it is our conclusion that Convention No. 87 may be unequivocally ratified by the United States without entailing any undertaking to enact legislation or to modify existing law, we recognize that some parties may still anticipate that ratification would unwittingly nullify domestic legislation through creative judicial construction. In response, we note two possible approaches which, if employed, would absolutely preclude such a result. First, the Convention could be ratified with the declaration that it is non-self-executing. Second, the Convention could be ratified with an understanding that "all necessary and appropriate measures" as provided by Article 11 means, in the context of the United States, that the obligations contained in the Convention have been acceded to only to the extent of the Commerce Power.

Background

The Convention on Freedom of Association (Convention No. 87) was adopted in San Francisco by the 31st Session of the International Labor Conference on July 9, 1948. It entered into force one year later on July 9, 1949. Eighty-seven States have ratified Convention No. 87 as of January 1, 1978.

Convention No. 87 provides that individuals, including both workers and employers, must have the right to establish and freely join organizations of their own choosing (Article 2). Such organizations "for furthering and defending the interests of workers or of employers" (Article 10) are entitled to certain safeguards designed to ensure their freedom of action (Article 3, paragraph 2 and Article 4). The rights of workers' and employers' organizations can be listed as follows: the right to draw up their constitutions and rules; the right to elect their representatives in full freedom; the right to organize their administration and activities; the right to formulate their programs; the right to establish and join federations and confederations; and the right to affiliate with international organizations of workers and employers.

The safeguards provided are as follows: organizations may not be dissolved or suspended by the administrative authority; the public authorities must refrain from any interference which would restrict the rights of these organizations or impede their lawful exercise; since these organizations are required to "respect the law of the land" (Article 8), the same safeguarding clause which applies to employers and workers as individuals is also applicable to their organizations, that is, the law must not "be such as to impair nor shall it be so applied as to impair the guarantees provided for"; senior organizations--federations and confederations--are entitled to the same rights and safeguards as basic organizations (Article 6); and finally, States must take all necessary and appropriate measures to ensure that workers and employers may freely exercise the right to organize (Article 11).

The genesis of the Convention began with appeals in 1947 by the American Federation of Labor and the World Federation of Trade Unions to the Economic and Social Council of the United Nations seeking international protection of trade union rights. The United States employed its leverage in ECOSOC to have the matter referred to the International Labor Organization against the wishes of the World Federation of Trade Unions, the Union of Soviet Socialist Republics, and others.

During the San Francisco conference in 1948, the United States was instrumental in the drafing of Convention No. 87. Under Secretary of Labor David A. Morse, who was then Acting Secretary of Labor, and Millard Cass, Special Assistant to the Under Secretary, represented the United States Government on the Committee which drafted Convention No. 87. In the plenary session of the Conference, the Convention was actively supported by the United States Government delegates (Acting Secretary of Labor Morse and Senator Elbert D. Thomas of Utah), the employer delegate (Charles E. Shaw), and the worker delegate (Frank P. Fenton).

On the two occasions when Convention No. 87 was before the International Labor Conference, the only governments opposing or abstaining with respect to it were South Africa, Portugal, Czechoslovakia, and Poland. In the record vote, no votes were cast against the Convention.

Following the Conference, the United States worker, employer and Government delegates issued a joint report which stated:

> The 31st Session of the International Labor Conference adopted on July 9 without any dissenting vote what was probably the most significant Convention ever adopted by the International Labor Organization. The Convention on freedom of association and protection of the right to organize is the first international Convention on this subject. It represents a valuable achievement to the United Nations as well as to the International Labor Organization, for the subject matter of the Convention had been referred to the ILO by the Economic and Social Council of the United Nations in April 1947.
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> The Convention on freedom of association and protection of the right to organize does not cover the subject of industrial relations within the purview of the Labor Management Relations Act, 1947. Consequently, no conflict appears to exist between them.

The joint report of the United States Delegation recommended:

> Freedom of Association. Prompt consideration must be given to United States Action with respect to the Convention on freedom of association and protection of the right to organize. This Convention is one of the most significant and important ever adopted by the International Labor Organization. Since this is

> the first time that an international agency has adopted a Convention on this fundamental subject, a great deal of attention will be directed to the actions of member states. The relative positions of the Federal Government and the States with respect to the subject of freedom of association and protection of the right to organize must be explored and appropriate action taken in the light of the conclusions reached.
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> It is recommended that the United States Delegation to the Economic and Social Council support the action taken by the International Labor Organization at the 31st Session with respect to the general subject of freedom of association and protection of the right to organize.

At the request of Secretary Tobin, the Solicitor of Labor convened an Interdepartmental Legal Committee to determine whether Convention No. 87 was appropriate for federal action within the meaning of Article 19(7) of the Constitution of the International Labor Organization. The Committee was composed of officials from the legal offices of the Departments of Labor, State, Justice, Navy, and Interior, and the Federal Security Agency.

The Committee concluded, with the initial exception of the Department of Justice, that the freedom of association, which in the case of workers is ordinarily referred to as the right to organize, is a fundamental right that is protected under the first, fifth, tenth, and fourteenth Amendments to the Constitution of the United States. Thus, the Committee concluded that the Federal Government has adequate power to protect such right without resort to the Commerce Power or to any power arising directly from the ratification of a treaty. Since freedom of association is a constitutionally protected right in the United States, it was the Committee's view that any inconsistent federal or state law would be unconstitutional and that withdrawal of state remedies for protecting the exercise of such right would be unconstitutional state action.

Initially the Deparmtent of Justice expressed no opinion with regard to the Committee's concensus and took the position that ratification would be inappropriate unless accompanied by several understandings or reservations designed to assure: (1) a narrow interpretation of the requirements of the Convention; (2) an express negation of the creation of any new federal power as a result of ratification; and (3) an express denial of any alteration of existing federal anti-trust law by reason of the ratification. However, it was the Committee's view that on political grounds, both national and international, any such presentation of the matter to the Senate would create grave misunderstandings, unleash serious labor-management dissensions, provoke numerous problems for the Federal Government, and create national/international embarrassment.

On June 30, 1949, Secretary of Labor Tobin conveyed to Secretary of State Acheson "the coordinated view of the interested agencies and departments of the Executive Branch with respect to the Convention concerning freedom of association and protection of the right to organize (Convention No. 87)." Senate Doc. Exec. S, 81st Cong., 1st Sess. 8. Secretary Tobin stated:

> It is our view that the subject matter of this Convention is appropriate under our constitutional system for federal action within the meaning of article 19, paragraph 7(a).
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> * * * * *
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> It is our view that this Convention should be ratified by the United States, and we recommend that the President of the United States transmit this Convention to the Senate of the United States with a request for the advice and consent of the Senate to its ratification. It is also our view that no new Federal legislation or revision of existing Federal law is necessary to effect compliance by the United States with the terms of the Convention.

Id. at 9.

On August 26, 1949, Secretary of State Acheson recommended to President Truman that Convention No. 87 be transmitted to the Senate for advice and consent. He referred to the coordinated Executive Branch views stated by Secretary Tobin, and provided further that "the Convention affirms the guaranties provided under the first, fifth, tenth, and fourteenth Amendments to the Constitution of the United States. The delineation of appropriate spheres of Federal and State authority under our Constitution is not, of course, affected by anything in the Convention." Id. at 2.

On August 27, 1949, President Truman transmitted the Convention "with a view to receiving the advice and consent of the Senate to ratification." Id. at 1. However, hearings on Convention No. 87 were permanently postponed by the fallout from the "Bricker Amendment" controversy.

In public hearings on Senator Bricker's proposal the National Association of Manufacturers, the Chamber of Commerce, and the new United States Employer Delegate to the International Labor Organization, George McGrath, spoke against ILO Conventions generally, and particularly against Convention No. 87. Subsequently, at least two Assistant Secretaries of Labor, George Lodge and George Weaver, attempted to revive the issue of ratifying Convention No. 87 but in neither instance did the Department of State concur with the initiative. Since the Department of State never withdrew Convention No. 87 from consideration by the Senate, the Convention is still technically before the Senate for its advice and consent.

Scope of Convention No. 87

The drafting history of Convention No. 87 indicates that it was intended to constitute merely a preliminary stage in a continuing program of international protection of trade union rights. As such, the Convention is concerned only with the fundamental principles of freedom of association and does not encompass other aspects of industrial and labor relations, such as collective bargaining and the right to strike, which the drafters believed should be the subject of a separate and specific instrument. This is demonstrated by reference to the remarks made by the International Labor Office upon submitting the proposed Convention No. 87 to the 31st Session of the International Labor Conference:

> The Office, in full accord with the decisions of the last session of the International Labor Conference, has endeavored to define as concisely as possible the principles determining the rules governing freedom of association, principles which, be it remembered, are expressly sanctioned by the legislation and practice of the great majority of countries.
>
> In other words, all these countries are in a position to ratify the Convention without having first to amend their legislation concerning occupational organizations.
>
> On the other hand, any proposed regulation purporting to regulate even the smallest problems which might arise in practice in each country would have obliged the majority of countries first to amend their national legislation, frequently with regard to points of detail, before they would be in a position to ratify the international Convention. It is for this reason that the Office has purposely refrained from proposing to the Conference any kind

> of "code or model regulations" concerning freedom of association (International Labor Conference, Report VII, 31st Session, San Francisco at 84).

It is clear that Convention 87 as adopted by the Conference is in full accord with the intent as expressed by the Office. An article written by the International Labor Office discussing the history of Convention 87 noted with regard to Article 8*/ the following:

> The term "law of the land," as used in the second paragraph of Article 8, is interpreted as referring to all national legislation, including, therefore, any special legislation relating to workers' and employers' organizations. Several amendments had in fact been proposed with the object of including in the text of the Convention a reference to national legislation concerning workers' and employers' organizations, so as to enable States to lay down certain rules which, while not restricing the rights of organizations, would nevertheless specify the conditions deemed indispensable for their establishment and normal functioning.
>
> These amendments were withdrawn on the understanding that the report of the Committee would embody the statement of its Chairman to the effect that formalities prescribed by national legislation relating to the establishment and functioning of workers' and employers' organizations are fully compatible with the provisions of the Convention, subject to the explicit condition that such regulations do not bring into question the guarantees prescribed by the Convention itself.

See, "the I.L.O. and the Problem of Freedom of Association and Industrial Relations," 58 International Labour Review 575, 586 (November 1948).

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*/ Article 8 of the Convention provides:

1. In exercising the rights provided for in this Convention workers and employers and their respective organization, like other persons or organized collectivities, shall respect the law of the land.

2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

Office of the Solicitor
U.S. Department of Labor
1976

MEMORANDUM OF LAW

ILO Convention No. 87, concerning Freedom of Association and Protection of the Right to Organize, was adopted by the International Labour Conference in 1948. President Truman transmitted the text of Convention 87 to the Senate for advice and consent to ratification in 1949. The Executive Branch is now considering resubmission of Convention 87 and questions have been raised as to whether the Convention, once ratified, would be in conflict with earlier acts of Congress or of the law of the several States. In particular, questions have been raised by the Chamber of Commerce as to possible inconsistencies with the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA") and the Labor Management Relations Act of 1947 ("LMRA").

1. Are any provisions of the LMRDA in conflict with Article 3 of Convention 87?

Article 3 of the Convention provides:

> 1. Workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.
>
> 2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Various provisions of the LMRDA establish certain minimum conditions which labor organizations must meet in their constitution and operation and prescribe certain minimum standards to be followed by unions in the election of their officers. There follows a brief summary of the major provisions of the LMRDA.

Title I of the LMRDA is a "bill of rights for members of labor organizations". Title I gives every member of a labor organization the right to participate in the making of decisions which affect him, entitles members to equal treatment with other members of the union, and entitles members to a fair trial against charges brought against them. Further, Title I prescribes the manner in which labor organizations may increase the rates of dues, initiation fees or make general or special assessments upon the members.

Enforcement of the provisions of Title I is by the individual member who may file a civil action in the United States District Court. There is no authority for the government to enforce the provisions of Title I.

Title II requires the filing of three kinds of reports by unions and two kinds of reports by employers--all to be filed with the Secretary of Labor. First, the union is required to file a report accompanied by a copy of the constitution and bylaws. Second, the union is required to file an annual statement of finances to its members. Finally, officers and employees of labor organizations are required to file reports relating to dealings with an employer or with a labor organization.

Employers are required to report payments and agreements relating to activities opposing organization of employees and relating to collusion with the officials of labor organizations during contract negotiations. A report must also be filed by so-called "middlemen" who by agreement or arrangement with an employer undertake to influence employees regarding their organizational and bargaining rights or to supply information on union activity.

The provisions of Title II are enforceable by both criminal and civil sanctions. Civil enforcement is limited to the Secretary of Labor. The Secretary is also responsible for the administrative handling of the reports required under Title II and he is authorized to issue regulations describing the form and publication of the reports he deems necessary.

Title III of the LMRDA provides that trusteeships over subordinate bodies shall be established and administered only in accordance with the constitution and bylaws of the organization. This Title prescribes certain limitations to prevent abuses of such trusteeships. Title III sets forth procedures whereby a member or the Secretary of Labor may file suit to dissolve an illegal trusteeship. The provisions of Title III prevent a trusteeship from being abused or used as a means of consolidating the power of corrupt officers, plundering or dissipating the resources of local unions and preventing political competition.

Title IV prescribes the terms of office and procedures to be followed by unions in the election of officers. The provisions establish a set of substantive rules governing union elections to assure the free and democratic election of union officers. Although the elections are to be conducted in accordance with the constitution and bylaws of the labor organization, these may not be inconsistent with the provisions of Title IV.

The exclusive remedy for challenging an election subject to Title IV is a civil suit filed by the Secretary of Labor after receiving a valid complaint from a union member.

Title V provides safeguards for labor unions by imposing fiduciary status and obligations on union officers to check some of the abuses and the handling of union funds exposed in hearings before the McClellan Committee. Title V requires that union officers or representatives handling funds or property be bonded, and prohibits loans in excess of $2,000.00 to officers or employees of a labor organization. It also prohibits persons convicted of specific crimes, including violations of Titles II and III of the LMRDA, from serving in a union position or as a labor relations consultant for a period of five years after conviction or the end of imprisonment except by exemption of the Board of Parole. (A criminal provision prohibiting any person who has been a Communist Party member from holding union office was held to be unconstitutional as a bill of attainder in U.S. v. Brown, 381 U.S. 437, 85 S.Ct. 1707 (1965).

Title V also amended section 302 of the Taft-Hartley Act dealing with payments by employers to labor organizations or any representative of their employees.

The provisions of Title V were intended to correct instances of breach of trust, corruption, disregard of the rights of individual employees and other failures to observe the highest standards of responsibility and ethical conduct in the activities of labor organizations and their officers and representatives.

Title VI contains miscellaneous provisions dealing with the investigation of violations of the Act, extortionate picketing, cooperation and assistance between the Department of Labor, the Department of Justice and the States with regard to criminal prosecution. Title VI also makes it unlawful to discipline members for exercising any rights under the Act and to interfere with or prevent any person from exercising any right to which he is entitled under the Act.

Title VII contains amendments to the Labor Management Relations Act of 1947, as amended.

As the foregoing summary makes clear, the provisions of the LMRDA do in fact regulate the internal affairs and operation of labor organizations. Therefore, certain provisions of the LMRDA would appear to be in conflict with Article 3 of Convention No.87, based on a literal reading of paragraph 2 of that Article.

However, it is clear that the overall purpose of the LMRDA is to protect the rights of the rank and file members of labor organizations from improper practices on the part of their officers and representatives which defeat the federal labor policy as set forth in the Railway Labor Act, as amended, 45 U.S.C. §§151-88, and the Labor Management Relations Act of 1947, as amended, 21 U.S.C. §141 et seq. Further, the provisions of the LMRDA restricting internal union activities are also intended to make union officers more responsive to the will of the rank and file members. Accordingly, the LMRDA does not impair the fundamental principles stated in the Convention but rather is intended to preserve these rights to the rank and file membership and to prevent abuses by labor organization officers and representatives as well as by employers.

The LMRDA protects the rights of individual members with a view to allowing members to conduct local matters with a minimum of outside interference. The courts are reluctant to interfere in the internal affairs of unions. However, if intervention is warranted, the courts will fashion effective remedies to enforce the guarantees of the Act.

When Article 3 was proposed at the 31st Session of the International Labour Conference a number of amendments were presented to permit States to promulgate certain rules which, without restricting the rights of these organizations would, however, establish certain minimum conditions to be fulfilled by them in respect to their constitution and operation. According to the Provisional Record of the Conference:

> The Chairman stated that the Convention was not intended to be a "code of regulations" for the right to organise, but rather a concise statement of certain fundamental principles. The States would remain free to provide such formalities in their legislation as appeared appropriate to ensure the normal functioning of industrial organisations. It followed therefore, that formalities provided for by national regulations concerning the constitution and operation of workers' and employers' organisations were in conformity with the provisions of the Convention, provided that these regulations did not impair the guarantees granted by the Convention.

Following this statement, all the amendments dealing with the question were withdrawn and Article 3 was adopted in the form proposed.

See International Labour Conference Provisional Record, 31st Session, San Francisco, No. 19 (XXXI-1948).

The legislative history of the LMRDA shows that Congress weighed how best to legislate against revealed abuses without departing needlessly from its longstanding policy against unnecessary governmental intrusion into internal union affairs. Wirtz v. Local 153, Glass Bottle Blowers Associations, 389 U.S. 463, 470-471, (1968). Under the Act, official interference in the internal affairs of unions is limited to setting forth certain rights which may be enforced by private suit of the members, by requiring public disclosure of certain activities, and by making certain actions illegal. Even the provisions of Title IV, where civil suit by the Secretary of Labor is the exclusive remedy for violations of the election provisions, do not purport to take away from labor unions the governance of their own internal affairs and hand that governance over either to the courts or to the Secretary of Labor. Wirtz v. Hotel Employees Union, 391 U.S. 492, 88 S.Ct. 1743 (1968).

Accordingly, in view of the legislative history of the LMRDA and the interpretation of its provisions by the Supreme Court, we are of the opinion that the provisions of the LMRDA are not regulations which impair the guarantees granted by the Convention. Therefore, the LMRDA would not be in conflict with Article 3 as interpreted by the Chairman of the Committee at the 31st Session in 1948.

2. Is Title III of the LMRDA (Trusteeships) in Conflict with Article 4 of Convention 87?

Article 4 of the Convention provides:

> Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

As noted above, Title III of the LMRDA provides that trusteeships shall be established and administered over a subordinate body only in accordance with the constitution and bylaws of the organization, and it prescribes certain limitations to prevent abuses of such trusteeships. However, trusteeships are established by a parent organization over a subordinate body and in our opinion would not impair the rights set forth in Article 4.

In fact, the drafting history of Article 4 shows that it was intended to enable workers' and employers' organizations to enjoy all the guarantees offered by normal judicial procedure in those cases in which the suspension or dissolution of the organization is prescribed by national regulations as a penalty for breach of the law. There is no national law or regulation under which a labor organization may be dissolved or suspended.

The Conference Committee specifically rejected an amendment to the Office text to allow the suspension or dissolution of an organization by administrative action provided that a right of immediate appeal is granted to the interested parties. Both workers' and employers' members opposed this amendment because its adoption would merely have been to the detriment of the organizations by resulting in a reversal of the normal order of judicial procedure. Indictment, prosecution, and judicial decision should precede and not follow administrative action. In the Committee's view, no administrative procedure could offer guarantees equal to those afforded by judicial procedure. International Labor Conference Provisional Record, 31st Session, San Francisco, No. 19 (IV-1948); "The ILO and the Problem of Freedom of Association and Industrial Relations," 58 International Labour Review 575, 583 (November 1948).

3. Does Article 2 of the Convention Give Broader Rights than the LMRA?

   Article 2 of the Convention provides:

   > Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Since certain classes of workers, such as agricultural workers and public employees, are excluded from coverage under the LMRA, the question has been raised whether the Convention gives broader rights than the LMRA. In particular, it has been pointed out that the exemption in Article 9 for armed forces and the police suggests that all other classes of workers are covered by the Convention even though they may not be covered by the LMRA.

Convention 87 would prohibit the Federal Government from impairing the guarantees of freedom of association and the right to organize. These rights are inherent in the First, Fifth, and Fourteenth Amendments to the Constitution and no statute impairing them would be held valid. Workers, such as agricultural workers or public employees who are excluded from coverage of the Taft-Hartley Act, neverthless retain their constitutional rights to freedom of association and to organize. Such constitutionally-protected organizations of agricultural workers or public employees would be within the scope of the Convention as the term "organisation" is defined in Article 10: "any organisation of workers or of employers for furthering and defending the interests of workers or of employers."

It is clear that the Convention is not restricted only to workers covered by the NLRA. It is equally clear that workers who are not covered by the NLRA have constitutional rights to freedom of association and rights to organize that are co-extensive with the rights set out in the Convention. Exclusion from resort to government machinery established by the NLRA is not tantamount to a denial of these rights.

In addition, the distinction between the basic constitutional right to organize and rights conferred by statute, such as the right to bargain collectively or the right to strike, should be reiterated. The more restricted provisions of the Taft-Hartley Act do not go to freedom of association and the right to organize, but rather to matters subject to collective bargaining and collective bargaining procedures.

4. Are the Provisions of Article 2 consistent with State Laws restricting Associational Rights of Public Employees?

Decisions by the Federal courts have borne out the legal conclusion that the rights guaranteed by Convention 87 are constitutional rights protected from State interference. The Court of Appeals for the Seventh Circuit held in 1968 that union membership for teachers is protected by the right of association guaranteed by the First and Fourteenth Amendments, McLaughlin v. Tilendis, 398 F. 2d 287. The Eighth Circuit held the same with respect to municipal employees in 1969, American Federation of State, County and Muncipal Employees v. Woodward, 406 F. 2d 137. See also

Lontine v. Van Cleve, 483 F. 2d 966 (10th Cir., 1973) (sheriff's deputies); Melton v. City of Atlanta, 324 F. Supp. 315 (N.D. Ga. 1971) (police); and Atkins v. City of Charlotte, 296 F. Supp. 1068 (W.D. N.C. 1969) (municipal employees) where the courts invalidated State laws prohibiting union membership.

5. Are the provisions of article 8 inconsistent with each other?

Article 8 of the Convention provides:-

> 1. In exercising the rights provided for in this Convention workers and employers and their respective organisation, like other persons or organised collectivities, shall respect the law of the land.
>
> 2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

Some light as to the meaning of this provision is provided by the history of the Convention itself. An article in the International Labour Review, written by the International Labour Office, explains the matter as follows:

> The term "law of the land", as used in the second paragraph of Article 8, is interpreted as referring to all national legislation, including, therefore, any special legislation relating to workers' and employers' organisations. Several amendments had in fact been proposed with the object of including in the text of the Convention a reference to national legislation concerning workers' and employers' organisations, so as to enable States to lay down certain rules which, while not restricting the rights of organisations, would nevertheless specify the conditions deemed indispensable for their establishment and normal functioning.
>
> These amendments were withdrawn on the understanding that the report of the Committee would embody the statement of its Chairman to the effect that formalities prescribed by national legislation

> relating to the establishment and functioning of workers' and employers' organisations are fully compatible with the provisions of the Convention, subject to the explicit condition that such regulations do not bring into question the guarantees prescribed by the Convention itself.

See, "The I.L.O. and the Problem of Freedom of Association and Industrial Relations," 58 International Labour Review 575, 586 (November 1948).

A statement by the Chairman consistent with this understanding is found in the Provisional Record of the Conference in the context of Article 3. See page 5, supra.

It is our position that in the United States the formalities prescribed by national legislation relating to the establishment and functioning of workers' and employers' organizations, as discussed above in the sections relating to Articles 2-4 of the Convention, do not impair the guarantees prescribed by the Convention.

6. What are the obligations of the Federal Government under Article 11?

   Article 11 of the Convention provides:

   > Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measure to ensure that workers and employers may exercise freely the right to organise.

In 1949, when the Right to Organize and Collective Bargaining Convention was under consideration (Convention 98), the Conference Committee on Industrial Relations concluded that the scope of Article 11 includes protection against individual interference with organizational rights. Jenks, International Protection of Trade Union Freedom, 29 (1957), citing International Labour Conference, 32nd Session, Geneva, 1949, Record of Proceedings, p. 470.

Federal legislation specifically protecting the right to organize against private interference is restricted to the scope of the Commerce Clause, *e.g.*, the Taft-Hartley Act.

However, since this is the only "appropriate" measure the Federal Government can take to protect these rights under our system of government, it appears the obligations imposed by Article 11 are met. Additional Federal protection unlimited by the Commerce Clause is also provided if interference with the right to organize is done under color of law. Federal legislation under the Fourteenth Amendment makes criminal a willful deprivation of constitutionally-protected rights and also provides a Federal forum for civil actions to protect these rights. See 62 Stat. 696 (1948), 18 U.S.C. §242; R.S. §1979, 42 U.S.C. §1983.

Mr. KIRKLAND. With your permission, sir, I would just like to read an excerpt from it.

The CHAIRMAN. Surely.

Mr. KIRKLAND [reading].

> Although it is our conclusion that Convention No. 87 may be unequivocally ratified by the United States without entailing any undertaking to enact legislation or to modify existing law, we recognize that some parties may still anticipate that ratification would unwittingly nullify domestic legislation through creative judicial construction. In response, we note two possible approaches which if employed would absolutely preclude such a result. First, the Convention could be ratified with the declaration that it is non-self-executing. Second, the Convention could be ratified with an understanding that "all necessary and appropriate measures" as provided by Article 11 means, in the context of the United States, that the obligations contained in the Convention have been acceded to only to the extent of the Commerce Power.

The CHAIRMAN. One of the problems is there is a considerable body of legal opinion that might disagree with that by saying that that might be so that you could do that, but the courts may very well choose to take another interpretation, and you are leaving it up to the courts rather than the Congress.

For instance, I do not know whether an attorney named Mr. Potter wrote his opinions because of the Solicitor's opinion, but the reason I raise this question is that within the last 2 years, Mr. Potter, one of the participants who is participating in the hearings today published a monograph in which he seems to set forth what appears to me to be a convincing case that ratification of conventions 87 and 98 wold create all sorts of conflict with U.S. labor law.

Now, if his contentions are arguably correct, his contentions would go to the argument that ratification of these conventions would be stabilized—U.S. labor law, unless there is some way of reaffirming U.S. labor law after the ratification of the conventions, which would rise in the eyes of many to the dignity of being the supreme law of the land.

So, this is an area that I have raised with the Secretary of State; I have raised this issue with the Secretary of Labor, and of course, I would like your legal people, including Mr. Hickey, of course, to look at this and see if there is some way we can resolve this so there is a resolution of the conflict and the arguments that have been raised—which may or may not be accurate, but nevertheless, they are sincerely raised arguments that may be true. If that is so, I do not know many people who would want to have an international agreement or treaty disrupt the very difficult labor laws that presently exist, that have been arrived at with a lot of fighting on both sides all the way through these years, as you know. And even today, as you know, your organization would love to change some of these laws, as would many of the management organizations. So, there is always going to be that conflict between labor and management, and I do not blame anybody for being part of that conflict.

But I would like to challenge you, let's look at that and let us see if there is some way, because I am prepared to work with my colleagues who will have ultimate responsibility for this in the Foreign Relations Committee to perhaps resolve this, if we can.

Mr. KIRKLAND. Senator, speaking for the AFL-CIO, I am quite prepared to work with you and to work with anyone else, to allay any such apprehensions that this is a device, or is open to the possibility that it might effect fundamental, essential changes, important changes, in our national labor law.

I assure you, for the reasons that I stated before, that we have no intention and no interest in pursuing the route, the hypothetical route, of using the ILO procedure to effect a basic change in American labor law. That would be a foolish and self-defeating approach. We have no interest in that; it is not the way to go, just for reasons of common sense, as I have outlined them before.

We have suggested, from the Solicitor's memorandum here that I just quoted, a couple of ways in which those apprehensions could be laid to rest. If more are needed, we will be happy to look at it. But we are not interested in using this device as a means of rewriting American labor law.

The CHAIRMAN. And you have expressed that point.

Mr. KIRKLAND. We have a strong desire to rewrite American law—do not get me wrong.

The CHAIRMAN. I understand. [Laughter.]

Mr. KIRKLAND. I do not share the view that was expressed here, that our labor laws represent the highest expression of freedom of association in the world today; that is simply not true, unfortunately.

The CHAIRMAN. Well, I appreciate those comments.

I am particularly happy to have Senator Pell with us today as ranking minority member on the Senate Foreign Relations Committee, because this is a very, very serious topic that has very serious implications. There are serious arguments made on both sides. And your kind expressions that you are willing to do whatever it takes to resolve the issues, I think are certainly warmly received by me and I think would be by anybody. And that is assuming your desire to rewrite domestic labor law in the proper way, through the legislative channels, or constitutional channels.

Mr. KIRKLAND. I like the odds on getting 51 votes much better than I like the odds of getting 67 votes in the Senate.

The CHAIRMAN. That is right.

Mr. KIRKLAND. If you will let me get 51 votes. [Laughter.]

The CHAIRMAN. Well, I do not know that I am that important in that overall scheme of things.

Mr. KIRKLAND. I rather think you are, Senator.

The CHAIRMAN. Thank you. Well, I think you are very important, too. As a matter of fact, I have a great deal of respect for you, as you know, in so many ways. You have taught me a lot of lessons—and I presume you will teach me a lot more in the future.

Mr. KIRKLAND. I think I had better stand silent on that. [Laughter.]

The CHAIRMAN. I might add, Senator Pell, he thinks I am a very slow learner.

But let me just say this. You and I have talked about one methodology that might be a solution—and I would like you, Mr. Hickey, to think about this, as well, and of course, Mr. Brown, whom I have such a great admiration for—we have talked about the ratification of the conventions by the United States, and then have the Congress reenact present labor law—without any fight or any problem, we just get everybody to agree that is what is going to happen, and so last in time becomes the supreme law of the land. And of course, that is the labor theory underlying this, that the later in time enactment would prevail over any previously ratified treaty. It is an important legal point; I do not know whether that is the correct way to go or not. It is just something we have discussed in the past, and it may be a way out of this problem.

But you know, I have also reflected on that idea, and I just want to throw this out so we are all thinking about this. I want management, I want labor, I want the Secretary of State and his Department, and the Secretary of Labor and his Department, to think about these problems—on whether that is even a feasible idea. Let us suppose that we were able to implement that particular strategy. Domestically, the reenactment of U.S. labor law following a ratification would appear to be to assure the status quo—in other words, the present domestic situation. However, we could run into other problems with the ILO. For instance, if someone was able to point out an arguable conflict between U.S. labor law and the ratified conventions, then the same arguments that the United States is not complying with the ratified convention anyway—couldn't the Committee of Experts and the Conference Committee on Application of Standards make out a case against the United States? Is that a problem to us, or would we rather face that problem having ratified, preserving domestic labor law, than be under the present context where we have not ratified and domestic labor law is preserved, but we are in the difficult position of being a nonratifying country, trying to bring about forceful and effectve arguments with regard to freedom of association, forced labor, slavery, et cetera?

Mr. KIRKLAND. With respect to that point, there are two points I would want to make. First, they can do that now, with or without ratification.

The CHAIRMAN. Sure, sure.

Mr. KIRKLAND. We are just as vulnerable today to complaints before the Committee of Experts—and they are being cited in the report of the Committee on Application of Conventions—as if we had ratified it, by virtue of the constitutional requirements of being in the ILO. We are not immune from that kind of criticism, nor should we be. And I certainly do not think this country as a leader ought to be taking the position that somehow it is immune.

Second, if, that should take place, if a particular provision or application of U.S. labor law should be taken exception to and become the subject of complaint in the Committee of Experts and the Committee on Application, so be it—then, I think it ought to be examined on its merits. I think the Congress ought to examine it on its merits and decide whether or not it warrants a legislative change in those laws which would be accomplished by the normal legislative process which is, I presume, open to the consideration of such changes at all times.

And if the Congress declines to do that, well, then, we would have to accept some criticism, and be cited and then deal with that, just as other member states have to.

The CHAIRMAN. But you would rather have to face that criticism having ratified——

Mr. KIRKLAND. Certainly.

The CHAIRMAN [continuing]. Than to face it without having ratified.

Mr. **Kirkland**. Certainly. I think our position would be vastly stronger in such a circumstance if we had ratified.

The **Chairman**. If the legal scholars conclude that it would be an appropriate way to effectuate ratification of the conventions that we can ratify—because as you know, the Russians have only ratified 43 of the 160 conventions; the most that any country has ratified is 109, and that is Spain, and I think the second largest is France, with 107—we have ratified 7, and about five or six countries have ratified less than we have.

Mr. **Kirkland**. We have effectively ratified four, because I believe three of those are obsolete.

The **Chairman**. Well, of the seven we have ratified, most of them are maritime ratifications, and none of them are all that significant.

Mr. **Kirkland**. Yes.

The **Chairman**. But if we could somehow or other come up with this approach of ratification of conventions and immediately thereafter, ratify domestic labor law so that the status of that law is not changed, I presume we could have the support of the labor movement in America to do that, so that we would have no difficulty, and we would use the influence of labor, management, government and everybody else to try and bring this about. That may be the answer.

Am I correct in that assertion?

Mr. **Kirkland**. Yes; absolutely.

The **Chairman**. In other words, you would work with members of the Foreign Relations Committee and myself and others who are interested in this matter, and the leadership in both Houses of Congress on both sides of the floor, to see that this operates in a reasonable and effective manner.

Mr. **Kirkland**. We would be delighted to have that opportunity.

The **Chairman**. I think that is very important, because if that is the answer, then maybe the Tripartite Committee that Secretary Brock is establishing can approach this in a little more open manner than just 144 and 147 conventions, which I agree ought to be ratified without even comment. And there are a number of others. I would like to see a list made up by the three groups of conventions that we can automatically ratify, but do not have these types of repercussive implications, and go from there, and then come up with those that we have some difficulties with that should be ratified, and come up with solution of how we solve those problems, and then face those problems and go forward.

Mr. **Kirkland**. I would hate, sir, to fritter away this opportunity presented by your willingness to open this whole question and explore it now—fritter it away by producing only the mouse of one of these less significant and less controversial applications, if it means avoiding facing up to the question of the fundamental human rights conventions, that are really the soul and the heart of the entire ILO.

The **Chairman**. As you have noted, you and I personally are friends. We have a number of areas where we sincerely disagree, and you may be right and I may be right. But the fact of the matter is that in all honesty, there is nobody I respect in this ILO, representing the United States of America, there is nobody I respect more than you and Mr. Brown and the representatives of organized labor. In your active participation in this U.N. affiliated organization, the largest organization, I think you have saved the United States all kinds of distress through the years that otherwise would have occurred had it not been for your effective advocacy and that of Mr. Brown and others who work so closely with you. So you have my admiration, and I think the least that I can do is see what I can do to give not only you, but I think the Government part of this tripartite system and the business part of this tripartite system more effective leverage in working for the good of freedom throughout this world, and certainly the good of our country at the ILO—which, like I say, does not get much play over here in the United States of America, but it sure does everywhere in the world, and it is very influential in the rest of the world. And that is something I have had the good fortune to check out, once you challenged me to do so.

Mr. **Kirkland**. Senator, on this question of the importance of 87 and 98 and the other essential, in our view, conventions that are at the heart of the issue, I would say it is not simply a question of cleaning up the act of the United States in international fora so that we look better and we are not embarrassed, and so forth. To me, that is almost a lesser issue.

The failure of the ILO and all of our other associations, from the trade union point of view, our associations with our brothers and sisters in the democratic trade union movements of other countries, is the pursuit of values and the opportunity to exercise a role as the leading spokesman for values in the world—from the moral point of view, from the human point of view.

But beyond that, it is in the most solid self-interest, national interest, of the United States and the world, that these doctrines and that these values be effectively promoted throughout the rest of the world.

We cannot prosper economically, politically—leaving aside morally—if freedom of assocation is destroyed in the rest of the world. Our standards would not survive that. Our values would not survive that.

We face enormous problems today in the economic sphere in large part because of the repression of freedom of association and the repression of standards of life and of labor in so much of this world. It is costing us dearly.

I do not want to spend my life in the American trade union movement presiding over the reduction of American conditions and American standards of life to a level of the lowest common denominator. This is a vital and one of the few real tools and instruments that we have for elevating those standards elsewhere to some level not quite as remote from what we enjoy. That is, I think, to my mind a far more present and urgent threat to what this country stands for than are all the missiles of the Soviet Union. And it is in our narrow national interest, as well as in our moral interest, and in the interest of the values we stand for, to do everything that we can, through every avenue that we can, to elevate these standards of work and life in these countries around the world.

To me, it is subversive or undermining of what we stand for to fail to do it or to refuse to do it, or to quibble over little hypothetical possibilities that some section of the labor code might be interpreted wrongly by some sitting judge somewhere, particularly when there are, clearly, if the desire is there, ways and means of obviating that possibility. When I hear many of these arguments, I am reminded of an old slogan, common in the Army: "Can't do it means you don't want to do it." If we want to do it, we can do it, and there are ways to do it, and we want to cooperate in that effort.

The CHAIRMAN. Well, thank you, Mr. Kirkland.

I am sorry, Senator Pell, that I have taken so long here, but we will turn to you at this time.

Senator PELL. Thank you. Mr. Chairman.

I am just curious about what the impact on the American worker would be if the United States ratified these different conventions.

Mr. KIRKLAND. Of 87?

Senator PELL. Yes.

Mr. KIRKLAND. The immediate impact in terms of the legal environment that we live in would be zero. The impact in strengthening our hand and our relations with our colleagues in the rest of the world would be very significant. And the impact in strengthening our ability to do more effectively what we are trying to do throughout the world in helping struggling groups of workers to realize some freedom of association, to get a share of the fruits of trade and commerce, so that it does not just fall into the pockets of a mercantile class, while their conditions are kept at a minimum so as to further enrich that mercantile class, I think that would be vastly enhanced. And that is our motive, sir.

Senator PELL. One other specific question. What is the relationship of the AFL-CIO to the ILO? Are you responsible for the labor side of the tripartite representation?

Mr. KIRKLAND. The constitution of the ILO provides that it is tripartite. There are representatives of Government, business, employers, and workers. The constitution provides that the representative of the workers is nominated by the most representative body of workers in the country, and that is us, sir.

Senator PELL. I should know—who is our representative there?

Mr. KIRKLAND. Irving Brown. He is the workers delegate for the United States at the ILO.

Senator PELL. But his place of residence is Paris, and the ILO is in Geneva; how can he do both?

Mr. BROWN. I am shuttling quite a bit, Senator.

Mr. KIRKLAND. He is a member of the governing body of the ILO, which meets—how many times a year?

Mr. BROWN. About three or four.

Mr. KIRKLAND. Three or four times a year, and he is present at each governing body meeting. He also leads our delegation to the ILO Conference in June, and he is present throughout that period.

Senator PELL. I have worked with Irving Brown, I guess, since 1956.

Mr. BROWN. Yes; we were on a committee together.

Senator PELL. Thank you very much.

The CHAIRMAN. Well, I want to thank you as well for appearing here today. And I just say this, I know Irving Brown spends a lot of time in this country as well as in Paris, but a great deal of time in

Geneva. And I do not know anybody who is more effective in the interest of freedom around the world than Irving Brown. I am just very honored to have you here, as well as your colleagues, before this committee.

I am going to suggest this possible course of action and hope that you will lend some support to it. That is, I think really that the Tripartite Advisory Council ought to consider all the conventions, but especially the top six or seven that are mostly of concern to you. But I think they should go ahead and send up conventions 144 and 147. I do not think there is any real disagreement on that. And I hope that you, Senator Pell, will put the pressure on, along with Senator Lugar, in the Foreign Relations Committee, to get those two conventions up, and let's get them out and ratify them, and start moving in the right direction. Once we have done it, we might enjoy it; we might enjoy doing something specific.

And I would just say that literally, if we do that and then get the tripartite group, the advisory panel that Secretary Brock is putting together, if we get them to really focus on these problems, we may be able to come up with solutions. I think people with good will can solve these problems. And I agree with your more than eloquent statement at the end, that this goes a lot further and much beyond just the political interests of the United States of America. There are human values here that are extremely important. And this organization is one of the few organizations in the world that can promulgate those human values.

So I just want to thank all three of you for being here today. We know you have busy lives, and it is tough to do, but I think it is an important hearing, and I am hopeful that we can continue to push on from here and get some things done that really need to be done.

Senator **Pell**. And I will do whatever I can in the Foreign Relations Committee.

The **Chairman**. Thank you so much, Senator Pell.

Mr. **Kirkland**. With respect to those two conventions that you mentioned, sir, I want to make it clear that we support their ratification, and will do so.

The **Chairman**. Oh, I understand.

Mr. **Kirkland**. What would disturb me would be if this was what we did instead of what we ought to do; if it facilitates the consideration of these more vital conventions, then that is a constructive step.

The **Chairman**. There are two parts to my proposal. One is I do not think they should waste anymore time on those two conventions. They have already decided those are worthwhile. And I want to get them sent up here and get them through, and get their time spent on these other, more important matters—they are all important, but really are more important from a human values standpoint—and let's see what we can do to resolve these. We may not be able to do it. We have always recognized that. But I am going to see what can be done.

Mr. **Kirkland**. Let me leave with the reporter the briefing paper that I read from.

The **Chairman**. The solicitor's opinion?

Mr. **Kirkland**. Yes.

The **Chairman**. Well, thank you so much.

Again, we want to thank all three of you for being here. Your testimony has been very helpful to the committee.

Thank you again.

Mr. KIRKLAND. Thank you, Senator.

The CHAIRMAN. Our final witnesses today will be Ambassador Abraham Katz, who is president of the U.S. Council for International Business, accompanied by Ed Potter and Cory Highland.

We want to welcome all of you to the committee today. We look forward to taking your testimony and exploring this issue to see what we can do to get tripartite support for some approaches that may work.

Mr. Katz, we will turn the time over to you.

STATEMENT OF ABRAHAM KATZ, PRESIDENT, U.S. COUNCIL FOR INTERNATIONAL BUSINESS, NEW YORK, NY, ACCOMPANIED BY EDWARD E. POTTER, McGUINESS & WILLIAMS, WASHINGTON, DC, AND A. CORY HIGHLAND, DIRECTOR, INTERNATIONAL LABOR AFFAIRS, U.S. COUNCIL FOR INTERNATIONAL BUSINESS, WASHINGTON, DC

Mr. KATZ. Thank you, Senator.

The CHAIRMAN. Excuse me, Mr. Katz. I wonder if you would be kind enough to summarize your testimony. I am going to put the complete statement in the record, but I ran out of time 15 minutes ago. I do want to give you enough time, and I do have some questions, but I am just going to have to ask that.

Mr. KATZ. Precisely. I was going to begin by saying that in order to prove or to demonstrate the employer side of this very important tripartite arrangement is not being simply wrongheaded, willfully obstructionist, we have put forward what we think is a reasoned explanation of our position on the two questions which you raise, and obviously, there is no time to go through the entire statement, and I appreciate your willingness to put it in the record. If I may, then, I will proceed to summarize the main points.

I am Abraham Katz, president of the U.S. Council for International Business. The U.S. Council is the organization that represents American business interests on international economic policy issues at the major international economic institutions.

Of particular relevance to these hearings, the U.S. Council is the U.S. member of the International Organization of Employers, and is the organization representing U.S. business in the International Labor Organization.

As a result, the U.S. Council participates in that organization directly on behalf of the U.S. business community.

Soon after becoming president of the U.S. Council in June 1984, I was elected to an employer seat on the governing body of the International Labor Organization. While my involvement with the ILO has therefore been relatively short, I have some experience in foreign affairs and international organizations.

Also present is, on my left, Cory Highland, manager of international labor affairs for the U.S. Council, and Edward E. Potter, an attorney with the law firm of McGuiness & Williams, who serves as legal counsel on international labor issues to the U.S. Council and whose work—whose seminal work, I might say—you had occasion to refer to earlier.

Now, there is one person who should have been here but could not, because of an unavoidable conflict—Charles H. Smith, the U.S. employer delegate to the ILO conference since 1975, and a man of over 30 years of experience with the ILO, and who is chairman of Cisco Industries in Cleveland. Charlie wanted me to convey his regrets for being unable to be here today. He is the institutional memory of American business in the ILO, and his testimony today would have greatly added to the employer contributions to this hearing, but I will refer to his judgment on one or two matters in one or two moments.

The CHAIRMAN. Let me keep the record open and invite Mr. Smith to submit written comments to the committee, if he should care to do so.

Mr. KATZ. Fine. Thank you, Mr Chairman.

My testimony will focus on the two questions that you have raised—first, what is the feasibility of U.S. ratification of certain ILO conventions without a detrimental effect on U.S. labor laws; and second, what if any linkage exists between U.S. ratification of ILO conventions and U.S. influence in the ILO.

In brief, the business community's answers to these two questions are: No; it is not feasible to ratify. ILO conventions which contain legal requirements different from U.S. law, without having a detrimental effect on U.S. laws.

And to the second: We feel that there is little, if any, linkage between U.S. ratification of ILO conventions and U.S. influence in the ILO.

Turning to a discussion of the first question, let me be clear at the outset that U.S. business recognizes that many international labor conventions embody principles that we all share and espouse. However, because these conventions contain legal requirements that are different in many material respects from U.S. law and practice, the business community is opposed to their ratification.

If the United States were to embark on a course of ratifying ILO conventions with legal requirements that conflict with existing U.S. labor law, it would have significant legal and international political ramifications.

The lengthier statement that I have already provided the committee describes the process by which ILO standards are developed. This is a very different process from the way we enact labor laws in the United States. The nature of the ILO, the procedures used there, the nations and peoples involved, virtually guarantee that the legislation that emerges from that process will be different from labor legislation enacted by the Senate and the House of Representatives in the United States. And this is especially true of the so-called basic human rights conventions which, if ratified, would have a direct impact on such fundamental labor law statutes in the United States as the National Labor Relations Act and title VII of the 1964 Civil Rights Act.

In addition to the economic and political diversity found in the ILO, the process itself is not conducive to the development of practical and realistic standards that reflect balanced compromises because: First, the International Labor Office, which is the Secretariat of the ILO, has a great deal of latitude in determining the scope and content of the proposed standard; and second, unlike the 2-year sessions of Congress, the two-discussion procedure which Mr. Kirkland alluded to in the ILO automatically and often prematurely concludes the legislative process, leading to the promulgation of an ILO standard.

Increasingly, ILO instruments concentrate less on promoting basic norms for trade union and worker rights, such as the right to organize and collective bargaining, and more on the establishment of very highly detailed and relatively sophisticated standards of labor relations practices and social policy development such as vocational rehabilitation and employment policy.

The majority of ILO instruments therefore lack the basis for universal acceptance and application. One statistic about ratification: Only 75 percent of ILO conventions are ratfied by less than 25 percent of the members. Moreover, the subjects and content of standards have moved away from the basic body of standards that all nations can be expected to implement, toward complex instruments which attempt rigidly to monitor and control every aspect of working conditions.

Parenthetically, an example. My French employer colleague tells me that the reason France cannot ratify a convention dealing with agricultural working standards is because it would conflict directly with an age-old habit of students, when they come back from vacations, to work in the harvest, to work in the field. It would be a violation of the convention. And France, which is very influential in the ILO, simply could not face that conflict with its national law and practice.

ILO standards frequently prescribe a high degree of Government involvement in labor-management relations, relative to that found here in the United States. But even though ILO standards have not served as a basis for U.S. law, U.S. Government worker and employer representatives participate actively in the process that we describe in my written testimony.

We recognize that ILO standards serve as the starting point for labor legislation in many other countries. Consequently, U.S. business, which has global concerns, participates in the standardsetting process as actively as we possibly can to effect as constructive and useful standards as possible.

Senator, the United States is a nation of laws which would take seriously its obligation to implement ratified conventions. Consequently, an examination of the legal requirements of ILO conventions as compared to those found in domestic labor legislation is an important prerequisite to consideration of ratification of ILO conventions. Whenever the subject of ratification of ILO conventions comes up, the suggestion is made that conventions 87 and 98, which deal with freedom of association and right to organize and collective bargaining, should be ratified to counteract criticism of the United States for having failed to ratify these two cornerstone conventions of the ILO and to improve U.S. effectiveness in the ILO.

Secretary Shultz referred to the need to make a very important good-faith effort to look at these conventions. Secretary Brock spoke earlier about the need for a good deal more research and dialog on this issue. You yourself earlier alluded to the work of Ed Potter, and I would say that this detailed examination of the impact on U.S. law and practice of ratification of ILO conventions 87 and 98, which Ed completed in this pamphlet, which I hope can be included or provided for the hearing record——

The CHAIRMAN. Without objection, we will make that part of the record.[1]

Mr. KATZ. This monograph conclusively shows that in detail, U.S. labor law varies from the requirements of convention numbers 87 and 98.

Now, while these conventions both espouse principles that we all can generally agree with, and which underlie our principal labor statutes relating to collective bargaining, there are nevertheless significant legal differences between the conventions and U.S. labor statute.

For example, both conventions broaden the classes of employees entitled to National Labor Relations Act-type protection to include supervisors, agricultural workers, and public employees. Both would revoke substantial portions of the Landon-Griffin Act and limit restrictions on the right to strike and secondary boycott. Now, the complete list—and by the way, when I say "complete," this is just the list that Ed came up with in his research, which only dealt with laws that were readily at-hand—is on page 14 of the written testimony, and it is quite a serious catalog of issues. These are not matters of detail, Senator, and they are not matters that might come up as a result of some judge's interpretation. These are conflicts that would exist tomorrow if the Senate proceeded to ratify these two conventions.

The question of ratifying these two conventions also illustrates a problem common to almost all ILO conventions. That is, one of the prinicipal reasons why the United States has not ratified substantive ILO conventions other than those dealing with maritime standards has been attributable to our Federal system. Under the American constitutional system, most ILO conventions require legislative action by the constituent States as well as the Federal Government.

In addition to the problem of the differences between the legal requirements of the ILO conventions and U.S. law, the ILO supervisory machinery interprets and amplifies the legal requirements of ILO conventions and determines the ratifying countries' compliance. This machinery is not in our control. In many cases, details and requirements of the conventions which might not be readily evident from their language are identified by this machinery.

Unqualified ratification of ILO conventions has the force of an effect of law and could either supersede or require amendment to any existing U.S. labor statutes that might have conflicting legal requirements and constitute a multilateral treaty obligation of the United States.

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[1] Editor's Note: Due to printing limitations, the document referred to, "Freedom of Association, the Right to Organize and Collective Bargaining," was retained in the files of the Committee. It was published by the Labor Policy Association, Inc., of 1015 15th Street, N.W., Washington, DC, and is listed under Library of Congress Catalog Card No. 84-80187.

Consequently, to the extent that U.S. law varies from a convention's requirements, ratification of such convention not only could affect the substantive requirements of our domestic labor law, but would also establish an international obligation on the United States to fulfill their requirement. If the differences are not resolved, the international obligation is breached. The treaty's domestic effect, however, may be circumscribed through a judicial determination that the treaty is not self-executing, but requires implementing legislation to have domestic effect.

The scope of a treaty's effect may also be limited by understandings or reservations attached to the Senate's ratification of the treaty. But as I point out in my written statement, none of these methods provide a satisfactory means by which to ratify 87 and 98, or any other ILO convention which contains legal standards different from U.S. law, without either amending U.S. labor law or breaching the international obligation. Those are the Scylla and Charybdis here.

Where there are differences between U.S. law and a convention's requirement, there is no alternative that we could come up with but to conform U.S. law to the convention before ratification. To do otherwise would breach the international obligation.

If we were to begin to legislate U.S. labor laws through the ratification of ILO conventions, where the requirement of the ILO conventions differ from U.S. law, it would amount to a complete divestiture by Congress to the ILO of its delegated powers to establish labor policy. U.S. labor law would be substantially amended by a process in which both Houses of Congress would not participate and over which neither the President nor the Senate could really affect the substantive content.

On broader policy grounds, the business community remains opposed to ratification of ILO conventions because we are concerned that any ratification will be perceived by the ILO community as ending the longstanding U.S. policy of not ratifying nonmaritime ILO conventions. I think it is far better foreign as well as domestic policy to make clear to the ILO why the United States is not in a position to ratify ILO conventions. I think it is better policy to do that than to lead them to believe that with a change of heart, somehow we will now be ratifying quite a few, because I do not think, as a result of a process of study and the good faith process of looking at this in a tripartite forum that Secretary Shultz called for—I do not really believe on the basis of our partial work thus far that there are going to be many conventions that we will be able to ratify.

To go down this road, I am afraid, would subject this country to greater pressure to ratify conventions that present problems of different U.S. statutory standards or questions of Federal-State jurisdiction, and to additional criticism in the international arena if we fail to do so.

That, Senator, is the sum of my argument on the first point. Let me turn briefly to the question of effectiveness, the link between effectiveness and ratification.

I would say—and I think most observers would agree—that this administration has been more effective than previous ones in other U.N. agencies, mainly because of the leadership, assertiveness, and effectiveness of its representatives. Similarly, in the year that I have actively participated in ILO affairs, I have not found that U.S. effectiveness has been impaired because we have not ratified ILO conventions. Instead, I have found that my counterparts, Bob Searby of the Labor Department, and Irving Brown of the AFL-CIO, have been as effective as anyone in affecting the outcome of ILO matters, and both serve in leadership roles in the ILO. I leave it to others to judge my own effectiveness.

But on this issue, Charlie Smith has asked me to state that, based on his lengthy experience in the ILO, he concludes that there is no connection between ratification of the ILO conventions and U.S. effectiveness.

Nonratification of ILO conventions is not an impediment to U.S. effectiveness in the ILO. The fact that the United States has not ratified fundamental ILO conventions while it is subject to comment and debating points—but it is a debating organization, to a large extent—has not prevented active participation in the ILO's supervisory machinery or any technical committee by any U.S. employer, union, or Government representative. In fact, in many circumstances, the U.S. Government, union, or employer representative serves in a leadership role. The tripartite structure of the ILO facilitates the U.S. effectiveness in that organization.

In my view, the key to effectiveness in ILO forums is commitment, dedication of resources, and preparation. Clearly, the United States has improved its effectiveness in the ILO as a result of the heightened involvement of the U.S. Government, the AFL-CIO, and the U.S. Council for International Business, since the U.S. returned to the ILO in 1979 after a 2-year absence.

This has occurred after a period of almost 40 years in the ILO when, frankly, the United States did not devote enough attention to the organization. To those who say we must ratify ILO conventions to improve U.S. effectiveness in the ILO, it should be highlighted that the United States is only now beginning to increase its influence in ways that are meaningful.

If we were to ratify any ILO conventions in which our law is at variance with the requirements of the convention, it would present an opportunity that does not exist now for our critics to criticize the United States. American participants at numerous ILO conferences during the last quarter-century have been able to respond to Soviet bloc attacks on our failure to ratify fundamental ILO conventions by stating the consistent U.S. policy of not ratifying nonmaritime ILO conventions.

I admit we have not explained the policy well, Senator. I find even with my employer colleagues from other countries that when I have shown them just only recently Ed Potter's monograph, they were genuinely surprised and startled. So somehow, we have not really explained the important point of differences between ILO conventions and U.S. law.

Now, if we were to establish a precedent contrary to this policy, our critics in the ILO who ratified but certainly do not adhere to ILO convention Nos. 87 and 98 would be better able to call into question the U.S. ability or unwillingness to ratify such a convention.

In the ILO, there is no real political issue in my judgment regarding the issue of nonratification of ILO conventions by the U.S. Almost all countries understand that the United States does apply the body of international labor standards, but does so through legislation that is different in detail.

The real political issue in the ILO today is that the Soviet Union and other Communist countries do not apply ILO conventions, even though they ratify them. They have been severely criticized by the ILO for their failure to implement them, as in the case of Poland. The Soviet Union finds this criticism to be intolerable and seeks fundamental change in the ILO's supervisory structure and tripartism.

Because our laws differ in detail with many ILO conventions, due to political considerations here, ratifications would have adverse consequences either because of our lack of compliance with the convention or our failure to ratify other ILO conventions. On the other hand, the increased interest and attention given to the ILO affairs by the U.S. Government, AFL-CIO, and U.S. Council will in the long term greatly improve U.S. influence in the ILO to a far greater extent than will ratification of ILO conventions.

This concludes my testimony. I would be glad to take any questions, Senator. I must say, I was in sympathy with a great many of the points made by previous speakers, including Mr. Kirkland, but I think the problems that we have alluded to here, that we have outlined here, still are insuperable to our knowledge in terms of dealing with the fundamental issues which you have raised.

[The prepared statement of Mr. Katz follows:]

STATEMENT OF

ABRAHAM KATZ

PRESIDENT

U.S. COUNCIL FOR INTERNATIONAL BUSINESS

BEFORE

THE SENATE LABOR AND HUMAN RESOURCES COMMITTEE

SEPTEMBER 11, 1985

STATEMENT OF AMBASSADOR ABRAHAM KATZ

President, U.S. Council for International Business

I am Abraham Katz, President of the U.S. Council for International Business. The U.S. Council is the organization that represents American business interests on international economic policy issues at the major international economic institutions and to the executive and legislative branches of the U.S. government. As the U.S. member of the International Chamber of Commerce, it consults with various bodies of the United Nations. It represents business views in the Organization for Economic Cooperation and Development as the U.S. member of the Business and Industry Advisory Committee to that organization. More particularly relevant to these hearings, the U.S. Council is the U.S. member of the International Organization of Employers and is the organization representing U.S. business in the International Labor Organization (ILO). As a result, it participates in the ILO directly on behalf of the U.S. business community.

Prior to joining the U.S. Council in June 1984, I spent 34 years in the U.S. Foreign Service, the last three years of which were as the U.S. Ambassador to the Organization for Economic Cooperation and Development in Paris. Soon after becoming President of the U.S. Council, I was elected to an employer seat on the Governing Body of the International Labor Organization (ILO). While my involvement in the ILO has been relatively short, I have some experience in foreign affairs and international organizations. Also present is A. Cory Highland, Manager of International Labor Affairs for the U.S. Council and Edward E. Potter, an attorney with the law firm of McGuiness & Williams, who serves as legal counsel on international labor issues to the U.S. Council.

Charles H. Smith, the U.S. employer delegate to the ILO since 1975 and a man of over 30 years of experience with the ILO, wanted me to convey his regrets for being unable to be here today. Mr. Smith is the institutional memory of American business in the ILO and his testimony today would have greatly added to the employer contribution to this hearing.

My testimony will focus on the two questions that are the subject of this hearing. First, what is the feasibility of U.S. ratification of certain ILO conventions without a detrimental effect on U.S. labor laws and, second, what if any linkage exists between U.S. ratification of ILO conventions and U.S. influence in the ILO?

In brief, the business community's answers to these two questions are:

> I. No, it is not feasible to ratify ILO conventions which contain legal requirements different from U.S. law without having a detrimental effect on U.S. labor laws.
>
> II. There is little, if any, linkage between U.S. ratification of ILO conventions and U.S. influence in the ILO.

THE EFFECT OF RATIFICATION ON U.S. LABOR LAW

Turning now to a discussion of the first question, let me be clear at the outset that U.S. business recognizes that many international labor conventions embody principles that we all share and espouse. However, because these conventions contain legal requirements that are different in many material respects from U.S. law and practice, the business community is opposed to their ratification. If the United States were to embark on a course of ratifying ILO Conventions with legal requirements that conflict with existing U.S. labor law, it would have significant legal and international political ramifications.

I will begin by describing the process by which ILO standards are developed. My point in describing the process by which ILO standards are developed is to make clear that the nature of the legislative forum, the procedures used and the nations and people involved virtually guarantee that the legislation that emerges from the process will be different from labor legislation enacted by the Senate and the House of Representatives in the United States. I will then illustrate the differences and conflicts between ILO conventions and U.S. labor law by looking at two cornerstone ILO conventions -- Cohventions Nos. 87 and 98 -- which deal with freedom of association, the right to organize and collective bargaining. I will make the point that while they espouse principles and underlying values which are contained in U.S. law, there are nevertheless significant differences in detail. I will conclude my discussion of the first question by reviewing some of the political and legal ramifications of ratification of ILO conventions.

The Process of Developing International Labor Standards

The ILO, which today is composed of over 150 member countries, is a specialized agency of the United Nations having been formed in 1919, as a product of the Treaty of Versailles ending World War I. Its purpose then as now is to improve the level of working conditions of the workers of the world, in part, through the establishment of international labor standards. The tripartite structure of the ILO, composed of representatives of not only governments, but representatives of workers and employers worldwide, makes it unique in the United Nations family of intergovernmental organizations.

Before proceeding further, we should make clear our terms of reference. One major part of the ILO's program is the establishment of international labor standards through the promulgation of conventions and recommendations. A convention is a multilateral treaty which if ratified by a state creates, when it comes into force, a binding international obligation to conform domestic law and practice to the legal requirements contained in the convention. On the other hand, a recommendation, while also an international labor standard, is advisory and is not subject to ratification, although a country may voluntarily elect to enact legislation implementing a recommendation. For purposes of this hearing, however, we are only concerned about the binding legal effect of a ratified convention.

In this regard, the conventions that have been promulgated by the ILO touch the whole body of labor law in the United

States. This is especially true of the so-called basic human rights conventions that I will discuss later, which, if ratified would have a direct impact on such fundamental labor law statutes in the United States as the National Labor Relations Act and Title VII of the 1964 Civil Rights Act.

Structurally, the ILO is divided into three component parts, each of which has a role in the development of ILO conventions and recommendations. First, the Governing Body, which is the board of directors of the ILO, determines the number and subject of ILO standards to be be discussed at the June ILO Conference. Presently, it consists of 28 government members, 14 employer members, and 14 worker members.

Second, the International Labor Office, which is headed by the Director General, is the permanent secretariat of the ILO and is composed of some 2,000 international civil servants who administer ILO operations and engage in research and publication activities. It performs the staff work for the process leading to international labor standards.

Third, and most importantly, the International Labor Conference, which meets for a three and one-half week period in June of each year, is the legislature of the ILO. Among other responsibilities, it establishes international labor conventions which are multilateral treaties that may be ratified by the countries who are members of the ILO. In 1985, the Conference was attended by over 2,000 government, labor and employer representatives from 150 countries.

It should be recognized that there has been a substantial change in the number and level of development of the countries attending the June Conference. The ILO's first annual conference held in 1919 was attended by 39 countries. By the early 1950's, approximately 50 countries attended the Conference. As in other United Nations agencies, since that time there has been a tripling of the ILO's membership to over 150 countries with most of the increase coming from developing countries. As a result, the weight of the United States vote at the June Conference has been reduced to .6 percent, and that of all the industrial democracies of Western Europe, North America, Japan, Australia and New Zealand to less than 15 percent. In contrast, the so called Group of 77 developing countries (now numbering over 100) can easily outvote the entire group of industrial market economy countries which furnish over 80 percent of the ILO's funds. In fact, the developing countries alone have a voting majority in the ILO.

The ILO is a complex, multi-dimensional organization which brings together over 150 countries representing the spectrum of economically and politically diverse systems from our competitive market economy to the Soviet type economics. Moreover, over the past three decades international tensions and disputes, many unrelated to the purposes of the ILO, have significantly affected its work. East versus West, North versus South, Arabs versus Israel, Black Africa versus White Africa, developing countries versus industrialized countries, and economies with a high degree of government intervention versus free market economies are but a few of the important schisms that are part of most ILO conferences and meetings. Considering that the process also involves some 2,000 government, worker and employer representatives at the ILO Conference with a wide diversity of philosophies, it is evident that ILO standards will inevitably contain some legal requirements that are different from those that emerge from the U.S. political process.

The point I want to make here is that the practical reality in the development of ILO standards is that there is a wide diversity of points of view that are well beyond the scope of concerns of the people of the United States and the development of our own labor law.

In addition to the economic and political diversity found in the ILO, the process itself is not conducive to the development of practical and realistic standards that reflect balanced compromises because (1) the International Labor Office has a great deal of latitude in determining the scope and content of proposed standards and (2) unlike the two-year sessions of Congress, the two-discussion procedure in the ILO automatically and often prematurely concludes the legislative process leading to an ILO standard.

Normally, ILO standards are developed under what is known as the two discussion procedure. After the Governing Body has determined that a standard is on the agenda of an ILO Conference, the Office conducts a survey of labor laws of member countries and submits a report and series of questions to governments on matters that may be appropriate for standard setting. The questionnaires are lengthy and cannot be effectively answered by many countries. Moreover, input from national worker and employer organizations are not solicited or reported in others. While the United States Government certainly has the resources and consults with the AFL-CIO and the U.S. Council on these questionnaires, because the matters in them may be within the jurisdiction of several departments or offices in the U.S. Government and because of the difficulty of getting timely employer and union responses, the United States itself has had problems responding comprehensively and in a timely fashion.

Consequently, because the responses to questionnaires do not take into account all points of view, the ILO staff has considerable latitude in determining the content and direction of the first draft of the instrument. Although the proposed instrument is subject to amendment, its form and scope at the outset significantly influence the outcome of the Conference deliberations.

Shortly before the June Conference, the Office publishes a second report on the government responses to the questionnaire including a proposed standard. This proposal then becomes the basis for discussion and amendment at the Conference. Although the Conference is about a month in length, delegates have less than a week to submit amendments and the remainder of the time is spent in debate and voting. After the completion of the first discussion, the Office publishes a report of the technical committee discussion, and governments, in consultation with workers and employers, are asked to comment on the work product of the first discussion. This results in some minor amendments to the proposed instrument which is then published in a second report prior to the second discussion the following year. The second discussion proceeds along the lines of the first but the timetable is somewhat more abreviated because of the need to finalize the instrument so that it can be voted on at the Plenary of the Conference.

Even though ILO standards have not served as a basis for U.S. law, U.S. government, worker and employer representatives participate actively in the process. We recognize that ILO standards serve as the starting point for labor legislation in many other countries. Consequently, U.S. business, which has global concerns, participates in the standard setting process as actively as possible to effect as constructive and useful standards as possible.

As a result of the standard setting process, the Conference has adopted over 160 conventions and 160 recommendations that are intended to be universally applicable in ILO member countries. Increasingly, ILO instruments concentrate less on promoting basic norms for trade union and worker rights, such as the right to organize and collective bargaining, and more on the establishment of highly detailed and relatively sophisticated standards for labor relation practices and social policy development, such as vocational rehabilitation and employment policy. The momentum behind the process is sustained by continued demands from worker representatives for increased regulation of labor matters at the international level and by a sympathetic ILO bureaucracy whose procedures are entrenched in more than 60 years of standard setting experience.

It should be recognized that slightly over 71 percent of ILO conventions have been ratified by less than one-fourth of the ILO's membership. This statistic indicates that *the majority of ILO instruments lack the basis for universal acceptance and application. Moreover, the subjects and content of standards have moved away from the basic body of standards that all nations can be expected to implement, towards complex instruments which attempt rigidly to monitor and control every aspect of working conditions. ILO standards frequently prescribe a high degree of government involvement in labor-management relations relative to that found here in the United States*. Many provisions of ILO instruments are controversial and are adopted by close voting margins rather than by consensus in the technical committees which develop them. Therefore, it should not be surprising that countries have difficulty ratifying these complex instruments.

Although the proposed conventions may be imperfect in part because there was inadequate time to consider them fully, many countries vote for adoption of ILO conventions without any intent of ratifying such conventions. Other countries ratify these conventions without any intent of implementing them or without the economic, political and social development to implement them. Others simply are not implementing them properly.

Unlike some of these countries, however, *the United States is a "nation of laws," which would take seriously its obligation to implement ratified conventions*. *Consequently, an examination* *of the legal requirements of ILO conventions as compared to those found in domestic labor legislation is an important prerequisite to consideration of ratification of ILO conventions*. To illustrate the differences between the requirements of ILO conventions and U.S. law, I will now discuss two fundamental ILO conventions which advocates of ratification contend should be ratified by the United States, particularly if the United States is to improve its effectiveness in this forum.

Examination of the Differences Between ILO Conventions Nos. 87 and 98 and U.S. Labor Law

Since the United States joined the ILO in 1934, it has ratified only seven conventions, six relating to maritime matters. The other was a technical convention caused by the dissolution of the League of Nations and the establishment of the United Nations as the parent body of the ILO. None have involved national labor policies related to collective bargaining. Thus, the conventions that the United States has ratified have concerned matters involving international commerce and in which federal jurisdiction was not limited by the U.S. Constitution.

In trying to answer the basic question of whether the United States can ratify certain ILO conventions without a detrimental effect on U.S. labor law, we have not had time to scrutinize each of the some 160 conventions that have been adopted by the ILO. In view of the lack of universality of the majority of ILO conventions as reflected by the ratification of the majority of the ILO's conventions by less than one-fourth of the ILO's membership, this would not be a constructive exercise in any event.

Inevitably, whenever the subject of ratification of ILO conventions occurs, the suggestion is made that Conventions Nos. 87 and 98 on freedom of association, the right to organize and collective bargaining should be ratified to counteract criticism of the United States for having failed to ratify these two "cornerstone" conventions of the ILO and to improve U.S. effectiveness in the ILO. Last year, a detailed examination of the impact on U.S. law and practice of ratification of ILO Conventions Nos. 87 and 98 was completed by Ed Potter in a monograph entitled Freedom of Association, The Right to Organize and Collective Bargaining. (A copy can be provided for the hearing record.) To my knowledge, no one else has completed as an exhaustive and indepth study of the legal consequences of the ratification of these or any other ILO convention. Such analyses are essential if we are to make an informed judgment of the legal consequences of ratification of ILO conventions on U.S. labor law.

The study compares the substantive provisions of the Conventions with the requirements of existing U.S. law and practice, examines the authority of the President and Congress to bind the states to the terms of these Conventions, and considers various alternative methods by which the United States might ratify these Conventions and the consequences of each. I would like to spend a little time on Potter's study because, aside from the importance of the question of ratification of Conventions Nos. 87 and 98, it illustrates the problems of ratifying any ILO convention that contains standards different from U.S. law and practice.

Adopted by the ILO in 1948, Convention No. 87 guarantees to all employers and workers, including supervisors, the right to establish and join organizations of their own choosing, subject only to the rules of the organization. It expressly precludes governmental authorities from interfering in the organization's internal affairs, including suspension or dissolution by administrative authority. The Convention applies to both the public and private sectors, except its applicability to the armed forces and police is determined by national laws or regulations. Finally, each ratifying country commits itself to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organize.

Convention No. 98 was adopted by the ILO in 1949. It establishes employment protection for workers engaged in union activities and provides that workers' and employers' organizations will not interfere in each other's affairs. Governments are also obligated to encourage the voluntary negotiation of collective bargaining agreements. In addition to the excluded categories of employees under Convention No. 87, public servants engaged in the administration of the government are excluded from its protection.

As I have described these Conventions, they both espouse principles that we all can generally agree with and which underlie our principal labor statutes relating to collective bargaining. However, Potter's study conclusively shows that in detail U.S. labor law varies from the requirements of Conventions Nos. 87 and 98.

The study shows that ratification of Convention No. 87 could effectively:

1. Alter a fundamental principle of U.S. labor law which makes union rights derivative from those of employees, by subordinating employee rights to those of labor organizations;

2. Broaden the classes of employees entitled to NLRA-type protection to include supervisors, agricultural workers and public employees;

3. Revoke or modify substantial parts of the Labor-Management Reporting and Disclosure Act of 1959, particularly with respect to election procedures and prohibitions against persons with criminal records from holding union office;

4. Undermine the rights of the exclusive bargaining representative by permitting grieving employees to select minority or rival unions to represent them;

5. Repeal the employer free speech provision under Section 8(c) of the NLRA and prohibit all acts of employer and union interference in organizing;

6. Limit restrictions on the right to strike, including secondary boycotts, in both the public and private sectors;

7. Prohibit Congress from enacting legislation restricting participation of Communist Party members or members of other subversive groups in labor organizations;

8. Permit affiliation of plant guards with unions of non-guard employees;

9. Repeal Section 8(e) of the NLRA which prohibits "hot cargo" agreements;

10. Restrict withdrawal of exclusive recognition status by administrative authority and expand the scope of judicial review in such circumstances;

11. Revoke limitations on the political use of union monies; and

12. Remove limitations on the disaffiliation of local unions from international unions and the formation and dissolution of multiemployer units.

Likewise, ratification of Convention No. 98 could:

1. Broaden the scope of existing collective bargaining statutes in the private and public sector to cover certain excluded classes of employees, including supervisors;

2. Impose collective bargaining in some state and local jurisdictions and expand the scope of bargaining in the federal sector and other public sector jurisdictions;

3. Restrict limitations on the right to strike in both the private and public sectors;

4. Limit discretion in instituting wage-price controls;

5. Preclude legislation restricting the scope of bargaining in the private sector;

6. Eliminate the distinction made between the employer's obligation to bargain on mandatory and permissive subjects of bargaining;

7. Provide employee union officials with special employment protection during their tenure in office;

8. Modify the burden of proof and remedies provided in Section 10(c) of the NLRA;

9. Result in evolving legal standards based on ILO conventions adopted later in time.

Federal-State Jurisdiction

The question of ratification of Conventions Nos. 87 and 98 also illustrates a problem common to almost all ILO conventions. That is, one of the principal reasons why the United States has not ratified substantive ILO conventions, other than those dealing with maritime standards, has been attributable to our federal system of government. Under the American constitutional system, most ILO conventions require legislative action by the constituent states as well as the Federal Government. The Tenth Amendment of the Constitution provides that "powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively or to the people."

For example, with respect to Conventions Nos. 87 and 98, although the federal government has a general preemptive right under the Commerce and Supremacy Clauses of the U.S. Constitution to regulate private sector labor relations, the U.S. Supreme Court has found that right does not preclude all state regulation. Thus, the activities of private sector labor organizations or employers may be subject to state regulation where such activity involves trespass, libel or defamation, misrepresentation and breach of contract, and criminal actions involving violence, threats of violence or intimidation. Because Conventions Nos. 87 and 98 prohibit strict regulation of picketing and strikes and interference in internal union affairs, ratification of either Convention could result in conflicts in federal and state policies with respect to these private sector labor relations activities.

Under the ILO's procedures, federal states such as the United States are required to submit conventions and recommendations to national legislative bodies for enactment of legislation or other action within 18 months after an ILO Conference adopts an instrument. If the federal government also determines that action in whole or in part is required by the states, the conventions are to be referred to the states for enactment of legislation or other action.

In contrast to other federal states, however, the United States does not have any effective mechanism by which agreement could be reached by the states to comply with the requirements of conventions or to resolve conflicts between conventions and states laws. Failure to reconcile conflicting federal or state statutory standards with those of conventions such as Nos. 87 and 98 would result in the United States being found out of compliance by the ILO.

ILO Supervision of Compliance

In addition to the problem of the differences between the legal requirements of ILO conventions and U.S. law, the ILO's supervisory machinery interprets and amplifies the legal requirements of ILO conventions and determines a ratifying country's compliance. This machinery is not in our control.

A ratifying country's compliance is monitored by the ILO's regular procedure which, in part, involves automatic supervision of the application of ratified conventions by the Committee of Experts, an international body of 20 recognized labor law experts from all corners of the world. Significant problems identified by the Committee of Experts are then considered by the Committee on the Application of Conventions and Recommendations (CACR) of the International Labor Conference, which is essentially a political body of 100 or more government, employer and worker representatives whose report is subject to approval by the entire Conference.

A second component of the regular procedure is based on complaints under Articles 24 and 26 of the ILO Constitution by other governments or workers or employers organizations alleging that a member state is not applying a convention in a satisfactory manner. Under this procedure, the ILO may establish a Commission of Inquiry to consider the complaint and if the government concerned disagrees with the Commission's recommendation to alter its labor practices, the dispute may be referred to the International Court of Justice (ICJ).

The ILO has also established a special procedure for ensuring freedom of association that is applicable even if a member state has not ratified Conventions Nos. 87 and 98 on freedom of association, the right to organize and collective bargaining. Established in the 1950's, the Freedom of Association Committee of the Governing Body examines and issues decisions on complaints brought to it that rights to freedom of association have been violated.

It is principally through the reports of the Committee of Experts and the decisions of the Freedom of Association Committee that the scope of ILO conventions are amplified. In many cases, details and requirements of the conventions which might not be readily evident from their language are identified. For example, the right to strike is not expressly provided for in any ILO instrument, yet the Committee of Experts has determined that it is one of the essential means available to all workers and their organizations for the promotion and protection of their economic and social interests.

Consequences of Ratification of ILO Conventions by the United States

I have described in some depth the ILO procedures leading to adoption of ILO conventions and analyzed two key ILO conventions to provide the Committee with some feeling as to why U.S. law and practice might not automatically conform in detail with ILO conventions. At the same time, I pointed out that the ILO has in place supervisory machinery to assess compliance with the international obligation created by ratification of an ILO convention. Consequently, ratification of ILO conventions will have domestic legal and international political ramifications.

Unqualified ratification of ILO conventions has the force and effect of law and could either supersede or require amendment to any existing U.S. labor statutes that might have conflicting legal requirements, and constitutes a multilateral treaty obligation of the United States. Consequently, to the extent that U.S. law varies from a convention's requirements, ratification of such conventions not only could affect the substantive requirements of our domestic labor law, but would also establish an international obligation on the United States to fulfill their requirements. If the differences are not resolved, the international obligation is breached.

Unlike most other nations, in the United States ratification incorporates the treaty into domestic law, superseding prior inconsistent federal and state statutes, as well as creating an international obligation. A treaty's domestic effect, however, may be circumscribed through a judicial determination that the treaty is not self-executing, but requires implementing legislation to have domestic effect. The scope of a treaty's effect may also be limited by understandings or reservations attached to the Senate's ratification of the treaty.

None of the methods that are available to limit or qualify the domestic effect of ratification of ILO conventions provides a satisfactory means by which to ratify Conventions Nos. 87 and 98 or any other ILO conventions, which contain legal standards different from U.S. law, without either amending U.S. labor laws or breaching the international obligation. If such conventions were ratified on a self-executing basis, U.S. law would automatically be amended. If they were ratified on a non-self-executing basis, the United states would need to enact legislation to avoid being found continually out of compliance by the ILO supervisory bodies. There is, in this regard, a significant legal question of whether a non-self-executing declaration would be binding on the courts.

Moreover, neither reservations nor understandings provide workable alternatives. A reservation modifies or limits the substantive effect of a treaty provision between the reserving country and other nations that are a party to the treaty. The ILO, however, has maintained a consistent policy since 1920 that reservations are not permissible. Finally, understandings are used to clarify some matter incidental to the operation of the treaty in a manner other than a substantive reservation. While understandings are accepted by the ILO and could be helpful in resolving ambiguities between U.S. law and a convention's requirements, they are not helpful in reconciling direct conflicts. To do so would affect the substance of the international obligation, thereby constituting reservations which the ILO will not accept. (These alternative methods of ratification are considered in some depth in Part IV of Potter's study.)

I cannot stress too much the significance of the international obligation. To the extent that procedural mechanisms, such as declaring that a treaty is non-self executing or re-enacting our labor law wholesale after ratification, are relied upon to avoid amending U.S. law and practice if the convention's terms vary from U.S. law, then the international obligation would be breached. Moreover, such mechanisms would create confusion domestically for all parties as to the meaning of our labor law. In such circumstances, it would present an opportunity in the ensuing proceedings before the highly political CACR Committee for delegates or countries interested in embarrassing and discrediting the United States to hold our domestic laws and practices up to greater international scrutiny and criticism than is presently the case.

In summary, therefore, where there are differences between U.S. law and a convention's requirements, there is no alternative but to conform U.S. law to the convention before ratification. To do otherwise would breach the international obligation.

On broader policy grounds, the business community remains opposed to ratification of ILO conventions because we are very concerned that any ratification will be perceived by the ILO community as ending the longstanding U.S. policy of not ratifying non-maritime ILO conventions. It is far better foreign and domestic policy to make clear to the ILO that the United States will not and is not in a position to ratify ILO conventions. To do otherwise would subject this country to greater pressure to ratify conventions that present problems of different U.S. statutory standards or questions of federal-state jurisdiction, and to additional criticism in the international arena if we fail to do so. Consequently, the ratification of even a maritime convention should be proceeded with caution.

Significantly, ratification of ILO Conventions would deprive the House of Representatives of its constitutional role in the enactment of domestic labor legislation by excluding it from participation in the creation of labor law. This is contrary to the basic concept of separation of powers, particularly in view of the fact that conventions like Conventions No. 87 and No. 98 conflict with settled statutory requirements created by both the House and Senate which have not been subject to major amendment since 1959.

If we were to begin to legislate U.S. labor law through the ratification of ILO conventions, where the requirements of the ILO conventions differ from existing U.S. law, it would amount to a complete divestiture by Congress to the ILO of its delegated powers to establish labor policy. U.S. labor law would be substantially amended by a process in which both Houses of Congress did not participate and over which neither the President nor the Senate can affect the substantive content. Moreover, once the Conventions were ratified, Congress would be prevented from enacting legislation at variance with them unless it wants to breach the international obligation. Furthermore, under the denunciation procedures found in ILO conventions, the United

States would be prohibited from withdrawing from their legal requirements except during one-year time periods at 10 year intervals. For the President, Congress, labor and management thus to cede the development and interpretation of labor policy in the United States to an international forum, which is not responsive to the will of the electorate through their elected representatives, would be at odds with our constitutional system of government.

THE RELATIONSHIP OF U.S. EFFECTIVENESS AND RATIFICATION

U.S. Effectiveness in the ILO

Turning now to the second question of the relationship of U.S. effectiveness in the ILO and ratification of ILO conventions, let me state at the outset the difficulty of establishing criteria to determine effectiveness. Most observors would agree that this Administration has been more effective than previous ones in other United Nations agencies because of the leadership and effectiveness of its representatives. Similarly, in the year that I have actively participated in ILO affairs, I have not found that U.S. effectiveness has been impaired because we have not ratified ILO conventions. Instead, I have found that my counterparts Bob Searby and Irving Brown have been as effective as anyone in affecting the outcome of ILO matters and both serve in leadership roles in ILO affairs. I leave it to others to judge my own effectiveness. On this issue, Charlie Smith has asked me to state that based on his lengthy experience in the ILO, he concludes that there is no connection between ratification of ILO conventions and U.S. effectiveness.

In my view, the key to effectiveness in ILO forums is commitment, dedication of resources, and preparation. Clearly, the United States has improved its effectiveness in the ILO as a result of the heightened involvement of the U.S. Government, the AFL-CIO and the U.S. Council for International Business since the United States returned to the ILO in 1979 after a two-year absence.

This has occurred after a period of over 40 years in the ILO when frankly the United States did not devote enough attention to the organization. To those who say we must ratify ILO conventions to improve U.S. effectiveness in the ILO, it should be highlighted that the United States is only now beginning to increase its influence in ways that are meaningful.

In this regard, in December 1983, the President's Committee on the ILO, which is composed of the Secretaries of Labor, State and Commerce, the Assistant to the President for National Security Affairs, and the presidents of the AFL-CIO and U.S. Council, adopted a number of U.S. objectives in the ILO. These objectives relate to the level of interest and participation of the United States in ILO programs and the degree of attention to detail that the United States gives to ILO programs, particularly the budget setting process. In the view of the business community, accomplishment of these goals, including preservation and strengthening of the ILO's supervisory machinery, bears little relationship to whether the United States ratifies ILO conventions.

Non-ratification of ILO conventions is not a impediment to U.S. effectiveness in the ILO. The fact that the United States has not ratified fundamental ILO conventions, while subject to comment, has not prevented active participation in the ILO's supervisory machinery or any technical committee by any U.S. employer, union or government representative. In fact in many circumstances, the United States government, union or employer representative serves in a leadership role. The tripartite structure of the ILO facilitates the United States' effectiveness in that organization.

It is often asserted by advocates of ratification of ILO fundmental human rights conventions that our failure to ratify them prevents the United States from filing complaints against other ratifying countries who have violated them. While true, once a complaint has been filed, the United States is not prevented from actively participating in the consideration of the complaint. For example, with respect to the complaint against Poland for its repression of trade unions in violation of Convention No. 87, the United States played an active leadership role in the consideration of the case. The fact that the United States had not ratified the convention did not foreclose its effective and active participation in the ILO's supervisory structure.

In addition, as you may know, the ILO is currently undergoing a comprehensive reexamination of its standards development. The fact that the United States has only ratified a few maritime conventions has not prevented the designation of representatives of labor, management, and government from the United States on a small Working Party on Standards. I am a member of that working party.

I have previously discussed the difficulties that the United States would have in complying with the obligations of conventions that contain legal requirements different from U.S. law. If we were to ratify any ILO conventions in which our law is at variance with the requirements of the conventions, it would present an opportunity that does not exist now for our critics to criticize the United States. While in the short term the United States might receive some political benefit for having ratified such conventions, in the long term ratification would be adverse to improving U.S. effectiveness in the ILO because of the continuous stream of criticism that result from all quarters if the U.S. did not dot every "i" and cross every "t" before and after it ratified a convention. I believe that these likely negative consequences would far outweigh any potential benefit in ratifying ILO conventions.

In the ILO, there is no real political issue regarding the issue of non-ratification of ILO conventions by the United States. Almost all countries understand that the United States does apply the body of international labor standards but does so through legislation that is different in detail.

American participants at numerous ILO conferences during the last quarter century have been able to respond to Soviet Bloc attacks on our failure to ratify fundamental ILO conventions by stating a consistent U.S. policy of not ratifying non-maritime

ILO conventions. If we were to establish a precedent contrary to this policy, our critics in the ILO (who ratify but certainly do not adhere to ILO Conventions Nos. 87 and 98) would be better able to call into question the United States' inability or unwillingness to ratify such conventions.

The real political issue in the ILO today is that the Soviet Union and other communist countries do not apply ILO conventions even though they ratify them. They have been severely criticized by the ILO for their failure to implement them as in the case of Poland. The Soviet Union finds this criticism to be intolerable in part because it diminishes its effectiveness in the ILO and is seeking fundamental change in the ILO's supervisory structure and tripartism.

There are constitutional, legal and practical difficulties of ratifying most ILO conventions. We in the business community continue to feel strongly that the establishment of labor law in the United States should be the province of domestic legislatures at the federal and state level and should not be determined in the highly politicized, highly erratic forum of the ILO and its Annual Conference. Considerable care should be taken in ratifying even conventions such as Convention No. 144, concerning tripartite consultation at the national level on ILO matters which we are fully implementing, because it would subject the United States to substantial pressure to ratify other more problematic conventions such as Conventions Nos. 87 and 98, and additional criticism in the international arena if we failed to do so.

Therefore, unless the United States is prepared to embark on a policy of ratifying a number of ILO conventions such as Nos. 87 and 98--a policy which U.S. business would continue strongly to oppose--our overall ability to criticize Soviet Bloc countries for non-implementation of ratified Conventions would be seriously diminished.

Because our laws differ in detail with many ILO conventions due political considerations here, ratification would have adverse consequences either because of our lack of compliance or our failure to ratify other ILO conventions. On the other hand, the increased interest and attention given to ILO affairs by the U.S. Government, AFL-CIO and U.S. Council will in the long term greatly improve U.S. influence in the ILO to a far greater extent than will ratification of ILO conventions.

This completes my formal testimony. I will be glad to answer any questions you may have.

The CHAIRMAN. Well, I personally appreciate the extraordinary effort that the three of you have put in to try and enlighten the committee, and your excellent statement.

Mr. Kirkland seemed pretty confident that conventions 87 and 98 on freedom of association could be ratified without having any effect whatsoever on U.S. labor law. Now, he in effect contends that conventions 87 and 98 are not self-executing.

I take it you do not agree with that conclusion?

Mr. KATZ. Senator, the problem is you cannot have it both ways in the ILO. In other organizations, in other forums with which I have had experience, you can deal with a ratification problem like this through the simple expedient of entering reservations. Reservations are out in the ILO. You can register some understandings, provided they do not change the substance of the international obligation. And unfortunately—or fortunately, depending on your point of view—in talking about freedom of association, the ILO did not simply say "We endorse the principle of freedom of association." They negotiated and promulgated a rather detailed convention, and this is international law and would be, as you have pointed out, the law of the land. If we found some way to say it is not self-executing, and we only want to adhere to this convention to the extent of existing U.S. law and practice, we would be in violation of the convention. There is no way out of it. These 12 points on 87 and 9 points of 98, if they continued in U.S. law, we would be in violation. And I do not think—it is certainly not my experience with 34 years in the State Department—that we knowingly go ahead and ratify international treaties in which we are planning to be in violation. That is why we have this whole process in the executive branch before any sort of international obligation is adopted, called 175 authority, to ensure that this does not take place.

Now, either we decide to amend the law ahead of time, or we will be in violation. I see no way out of it.

The CHAIRMAN. Let's go back to my question. Do you believe that the ratification of these conventions would be self-executing on the basis of the treaty, rising to the dignity of supreme law of the land under the Constitution?

Mr. KATZ. Yes, sir.

The CHAIRMAN. You do. And what about the interpretation given to 87 and 98 by the Committee on Experts, where they conclude that they would not be self-executing—do you differ with that?

Mr. KATZ. Well, I can call on Mr. Potter to address that. The point is that the laws would have to be in substantial—as the Solicitor General agreed—in substantial agreement with the obligations of the treaty, and that simply would not be the case. The fact is, since Mr. Potter's monograph was published, to my knowledge, nobody, either in the State Department, in the Labor Department, or in the AFL-CIO, has contested any of his assertions in any material respect. And we are quite prepared to engage in a further legal colloquy about this, but the fact is, you have a serious problem. The ILO expects that when we accept this convention, we will conform our law to it.

The CHAIRMAN. You have no problems, do you, with my suggestion that we at least ratify conventions 144 and 147—you would not have any problem with that.

Mr. KATZ. We have no problem with 147, but let me just make the point about 144.

The CHAIRMAN. OK.

Mr. KATZ. It is true that the legal group under the President's Committee, the so-called TAPILS, agreed that there would be no legal obstacle to ratifying 144. The employers at the time stated, or considered that it would not be a wise course to proceed to ratify that ILO convention, because ratification would be, as it were, giving the signal both at home and abroad, that we intend to ratify conventions whether or not those legal requirements of those conventions are different from U.S. law.

The Secretary of State, my former boss and a man who I respect more than any other Secretary under whom I have served, said maybe we ought to give a message to the ILO, to the world, that we do not have a closed mind on ratification, by ratifyng 144. I think it is an important thing to consider, and I think we should consider this very carefully in the meeting of the President's Committee that Secretary Brock has called, what kind of message we are sending.

The CHAIRMAN. Well, you seem to be raising the floodgates message, that that opens the floodgates. I am suggesting that that does not. I am suggesting that those are two conventions that we can ratify because basically, they should not be in contention, but we will make a good faith effort to look at others to see if there are others that we can ratify. That is all I am suggesting, because I do not see any reason why we should not ratify those that we can. I mean, that is just a straight-forward approach.

Mr. KATZ. It is. I would just remind you——

The CHAIRMAN. We are already doing 144, so what would be the problem——

Mr. KATZ. Precisely.

The CHAIRMAN. You would have no problem if they were ratified——

Mr. KATZ. We would have no legal problem——

The CHAIRMAN. That is my point.

Mr. KATZ [continuing]. About the convention itself.

The CHAIRMAN. But you do have a problem, as I understand you, that it may be sending a message that we may be intending to ratify, but I am saying that we are not sending that message; we are ratifying those two, because those two, we agree with.

Mr. KATZ. Article V, paragraph 1(c) of 144, says that the reexamination at appropriate intervals of unratified conventions and of recommendations to which effect has not yet been given, to consider what measures might be taken to promote their implementation and ratification, as appropriate. The covering sentence is: "The purpose of the procedures provided for in this convention shall be consultations on this."

That is a message about periodic ratification with the implicit understanding that the conventions should be ratified. And I come back to something Mr. Kirkland said very eloquently. He said that his interest—and from a political point of view, I can understand this very well—his interest is in ratifying the so-called cornerstone convention. If we ratify 144 and if the understanding both at home in the President's Committee and with the interested parties, is that we are going to proceed to ratify conventions which have significant legal differences with U.S. law and practice, that would be an unfortunate decision. And if we telegraphed that message to foreigners and then did not proceed to ratify——

The CHAIRMAN. But that is not the message I am suggesting. I am suggesting since there is basically no disagreement on 144 and 147, that we ratify those two conventions with no comment, really, about whether or not we are going to ratify others, other than we are going to look into it, which is what this hearing is all about.

You do not send any improper messages, it seems to me, if you make that very clear. So, what I am suggesting is that at the very minimum what the business community should do is come behind 144 and 147, with the caveat that you have grave difficulties going beyond that at this time, but you are willing to look at it.

For instance, there surely have to be some other conventions in the 160 of them, other than this would be our ninth—if we ratified those 2, those would be the 9 conventions out of 160-plus conventions that may also be ratifiable. But all we are going to do is give a good faith look and see what can be done.

You raise some very important issues, and I recognize those. Your statement is an excellent statement, and we cannot ignore those. You raise an issue that if we ratify 97, 98, and 105, we may be ratifying laws that we cannot live up to. There are others who argue that we can live up to them because you can interpret them one way or another. I tend to be as concerned as you are about any change in domestic labor law, as you know, and I do not want to have the business community all on its ear in this country because we want to make it so that we are an effective organization at the ILO, while still being, I think, the most liberal labor law-oriented country in the world. I mean, nobody can deny us that, even though they do because of the nonratification.

All I am saying is I would like to see the business community do what it can to cooperate and look at these things in good faith, and let's see what we can do. I am not going to force anything on anybody. I just want to see if, in good faith, we can resolve some of these problems that do exist without a disrupton in domestic labor laws that would enable us to be more effective in this international forum and would give us, I think, a better, straightforward, save-face approach than we have right now.

Mr. KATZ. Senator, that is a very important opinion that you have expressed. We have taken note of it. I will go back to my constituents and report it. As I said, on 147, I have absolutely no problem, I think there are problems on 144. We may be able to solve them, perhaps with an understanding with regard to our reexamination at appropriate intervals and so forth. But I wish I could take back an understanding that this was general, of three principles: First, that we should not ratify ILO conventions that have different requirements from U.S. law until both Houses of Congress resolve the differences; second, recognize that Federal-State jurisdiction may be an obstacle to ratification of many ILO conventions; and third, that each convention should be considered on its own merits, in a good faith manner, as the Secretary of State has mentioned, but it has to be looked at as a result of a rather profound legal examination.

And Senator, I want to be very frank. This work that you have is the first time this has ever been done, to my knowledge, the first time, the only time, and it was a partial effort of one person. The resources that would be required to do this are not inconsiderable. This is not just simply a matter of political will, of having your heart in the right place.

The CHAIRMAN. And I understand that.

Mr. KATZ. This will take some legal resources.

The CHAIRMAN. Look, I am not naive when it comes to this, and I do not think the business community has had anybody that has had a more open door policy than I have had, perhaps in the history of the Congress. And I do not think the labor community can say my door is not open, either.

I am chairman of this committee, and I want to resolve some of these problems because I see great value in doing so. And I would like the business community to put forth the utmost good faith effort to see what we can do to resolve these problems.

You have indicated that although reservations may be somewhat prohibited under this context, understandings are not. And it may be that we will have to do it with understandings.

But I would like to see—and I would like you to examine my suggestion that perhaps we get everybody to agree that we ratify the conventions, perhaps with understandings attached to them, and then immediately reratify American domestic labor law, so there is no question, because there is enough in these conventions, room for interpretation, that we can conclude that we are not violating those conventions by ratifying them and yet still keeping domestic labor law the supreme law of the land in supersedance to the conventions themselves. There are various points of view with regard to that, and we can make arguments both ways.

What I would like to do is see us be a more effective international organization, play a more effective role in this international organization, than we presently can do because of these limitations.

I think—and I agree with you—that the tripartite team at the ILO over the last 9 years since I have been in the Senate, and certainly over the last 5 years since I have been chairman of this committee, that team has really done a tremendous job. And each integral member of that team, plus associates and staff, has contributed to what I think is a superior job at the ILO.

What I would like to see is a good faith effort to resolve these very serious problems, and I want business to be an active participant in that good faith effort. And I think business owes it to the country—you owe it to me and you owe it to yourselves. That is all I am asking. I think your statement raises many important points. I have not read Mr. Potter's book in full, but I know the arguments, because I have read those. And I can tell you, he raises some substantial points that just have to be considered in the overall context. But surely, there has to be a way for legal minds as great as yours, and good will as great as Charlie Smith's and others, that we can get together and resolve this problem in the interest of everybody.

That is all I am asking of you. I do not want to have to lead out and do this on my own. I want to have cooperation from everybody. But it needs to be done.

Now, you have raised some good points, and I am going to spend more time studying it, to see if I am not going off here halfcocked a little bit. But I think where there is a will, there is a way, and I think we have got enough brains in both communities, management and labor, to come up with some solutions to these problems and put the United States in the position of being a forefront leader in this major area, that we in some ways are not now, and by implication and by actuality, cannot be. And we all know that some of these battles have to be carried through our affiliates, or the ICFTU or others, because we cannot directly carry them. And that is ridiculous. I would rather have us directly, up-front, carry some of these battles so that we are more influential, and I think that is where we make our mistake in world politics and international affairs, that sometimes we are not as straight up as we need to be.

So, I would like to find some way of being more straight up about it and having a greater influence in that body. I remember in 1983 when I received a call, not from the business representatives at the ILO, but from the labor representatives, to come over and help them with the anti-Israeli resolution. Well, you know, it came at the beginning of the week, on like a Wednesday, and that meant I have to leave Thursday night, fly all night long, which I did, and work all day Friday, all day Saturday, and when we left, everybody thought we had really given it the best effort we could, but that it was probably unlikely we could win. Well, it just so happened we won on that occasion. And it was an important win, because the United States would have been embarrassed by a very reprehensible resolution, as would Israel, and Israel might very well have been expelled from the ILO in subsequent years.

I would like to see us be more effective, and I think our representatives over there are the best in the world, in all three categories, and basically, without exception, really are doing the best they can, but with their hands tied behind their backs to a degree.

Well, with that, I would just like to encourage you to do so. I know that you will make a good faith effort because you always have, at my request, and let's see if there is some way we can resolve this problem. I am really interested in resolving it. I really am interested in going forward and giving some tools to all three entities to be able to help the United States in these international affairs and by necessity, help all kinds of countries that really need the leadership of the United States.

I think Mr. Kirkland really made a very eloquent final statement. You may disagree with certain elucidations of that final statement, but you had to agree with the morality of what he said. It was an important statement. And I agree that you have played a noble role at the ILO.

So, do that for me, and let's see where we go. But at the very minimum I am asking you to get 144 and 147 sent up here, and get them ratified, and let's start showing that we are not afraid of those conventions, and that ratifying two of them does not mean we are going to accept any others if they conflict with our conscience or what we feel are important domestic concerns. We can make that clear. But let's at least get those two ratified. Nobody really basically disagrees with those. And I think there is much to be gained by having those two ratified.

With that, we will recess until further notice, and we will keep the record open for Mr. Smith and any further comments that he has to make.

I want to thank you again for appearing.

The hearing is now adjourned.

[Whereupon, at 1:08 p.m., the committee was adjourned.]

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